

1925

## Convict Labor Policies

Henry Calvin Mohler

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Henry Calvin Mohler, Convict Labor Policies, 15 J. Am. Inst. Crim. L. & Criminology 530 (May 1924 to February 1925)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# CONVICT LABOR POLICIES<sup>1</sup>

HENRY CALVIN MOHLER

## TABLE OF CONTENTS

Foreword .....	
Introduction .....	
1. The motives of convict labor.	
2. The difficulties and the instruments of progress.	
Chap. I—Historic Evolution of Convict Labor Policies.....	
1. In ancient times.	
2. Ideas of Plato.	
3. Evolution of houses of correction in England.	
4. The galleys of the fifteenth century.	
5. Houses of correction on the Continent.	
6. The state prisons.	
7. "Model labour."	
8. Recent conditions in English prisons.	
9. Modern Continental European prisons.	
10. Transportation and indenture.	
Chap. II—A Survey of the Principal Systems of Convict Employment.	
1. Public account.	
2. Contract.	
3. Piece-price.	
4. Lease.	
5. State-use.	
6. Public works.	
Chap. III—Convict Labor in the United States Before the Civil War.	
1. Colonial policies.	
2. Rise of the state prisons.	
3. Contract supplants public account.	
4. Early motives of employment.	
5. First protests of free labor.	
6. Beginnings of the lease.	
7. The Civil War period.	
Chap. IV—The Leasing System.....	
1. Its origins.	
2. Reasons for adoption and retention in the South.	
3. Arraignment in 1883 by Cable and others.	

<sup>1</sup>[A thesis submitted for the degree of Master of Arts, University of Wisconsin, 1923. The writer is now Fellow in the Department of Sociology of the University of Minnesota. We regret to note that the author, in his historical passages in Chap. I, has made no use of the authoritative "History of Continental Criminal Law," by Professor Von Bar (Continental Legal History Series, Vol. VI), and that the latest developments of Dr. Whitin's state-use system (p. 587) have not been mentioned.—Ed.]

4. Difficulty of reform exemplified in Georgia.
  5. Object of Federal attack in 1906-08.
  6. Its workings in Florida.
- Chap. V—The Protest of Organized Labor and of Business Associations .....
1. Manifesto of the hatmakers in 1878.
  2. Pronouncement of the Knights of Labor in 1886.
  3. The National Anti-Convict-Contract Association.
  4. Investigation of the Commissioner of Labor of the U. S., 1886.
  5. The probable truth about competition.
  6. Enlarging outlook of the trade unions.
  7. Activities of the American Federation of Labor.
- Chap. VI—Convict Labor Progress to 1900.....
1. Restatement of the reformatory motive in 1870.
  2. Organization and activities of the American Prison Association and of the National Conference of Charities and Corrections.
  3. The action by various states.
  4. The search for a policy suitable to all interests.
  5. Gradual rise of the state-use system.
  6. Investigation of the Commissioner of Labor of the U. S., 1895.
  7. Investigation of the U. S. Industrial Commission, 1899.
- Chap. VII—Convict Labor Progress Since 1900.....
1. Extension of public works system and state farms.
  2. Decline of leasing system under federal attack and nation-wide publicity.
  3. Alternatives to the lease attempted in the South.
  4. Formation and activities of the National Committee on Prison Labor.
  5. Road work.
  6. Proposed "states'-use" system.
  7. The state-use system in New York.
  8. Reviving importance of the state account system.
- Conclusion .....
1. Full emergence of the reformatory motive.
  2. Publicity and practical reform.
  3. The passage from ends to means.
  4. The standard criteria of prisoner employment.

## FOREWORD

"Its dealings with the criminal mark, one may say, the zero point in the scale of treatment which society conceives to be the due of its various members. If we raise this point we raise the standard all along the scale. The pauper may justly expect something better than the criminal, the self-supporting poor man or woman than the pauper. Thus if it is the aim of a good civilization to raise the general standard

of life, this is a tendency which a savage criminal law will hinder and a humane one assist."

L. T. HOBHOUSE,

"Morals in Evolution," *Law and Justice*, p 113.

### INTRODUCTION

The commission of crime has, since early times, often entailed upon the offender the consequence of compulsory labor. The dominant motives of this labor have been penal and economic. Only in recent times have they been successfully challenged by others, such as the disciplinary and reformatory motives.

As far as the interests of the convict are concerned, the disciplinary and economic or profit motives represent little advance over the penal motive. Indeed, the profit motive, seen at its worst in our lease and contract systems in America, often puts the welfare and future of the convict quite out of consideration. He is likely to be driven harder and exploited more mercilessly than in any other case. The one creditable motive which should prevail at all times and places, the motive of reformation, faces obstacles, the number and difficulty of which challenge the boldest, most persevering, and most resourceful, of the modern sponsors of reform.

The story of convict labor is, therefore, sordid, gloomy, unpleasant, and often tragic. Formerly labor, being an element in the retaliatory reaction of society against the individual, was accompanied in its imposition by all the hatreds and prejudices that color and characterize the attitude of retaliation. The heart and the mind of society remained closed against the convict. His fate mattered not to any one and that this fate was a hard one is appallingly evident from the records of the past.

In modern times, the attitude of retaliation or vengeance is steadily losing its recognition in the organized law of states. There still remain inert survivals in those clauses of our statutes which condemn offenders to "imprisonment with hard labor." But the practice and the theory are tending to diverge. The attitude of retaliation is, indeed, in a measure, outlawed. Certainly this is true when it manifests itself in such forms as the "unwritten law" and "lynch law." Nevertheless, progress is slow. Society as a whole no longer hates its criminals. But, its own protection against them being measurably secured, it tends to regard them with indifference. Certain groups only are actively concerned with the consequences of crime, including of course

the occupational aspects of punishment. We may distinguish four of these groups.

The first includes the public officials, who bear direct responsibility for the convicts. The second consists of certain employers and private interests who wish to profit through the exploitation of cheap convict labor. The third is the labor organizations who are determined to quell the competition of this cheap labor with their own. Fourth, there are the reformers, a motley throng containing prison officials, politicians, professors, lawyers, authors, and clergymen. The modern evolution of convict labor policies is the resultant of the simultaneous efforts of these groups to accomplish their several ends.

The mass which we call society is occasionally swayed to action, the type of action depending upon whether the appeal to a certain social motive or feeling, as sympathy, intelligence, revenge, cupidity, or justice, or to some combination of these, is able for the time to win for that motive or combination of motives, supremacy over all other considerations. We may, however, conclude that, in general, the indifference and the ignorance of society constitute the perpetual opportunity of the exploiters, while its inertia can be dispelled, on the part of the reformers, by nothing less than a persistent habit of investigation and inspection, accompanied by an incessant drumfire of agitation and publicity.

## CHAPTER I

### THE HISTORIC EVOLUTION OF CONVICT LABOR POLICIES

In ancient Oriental countries convict labor appeared simultaneously with the dawn of civilization. The Pharaohs of Egypt employed notorious criminals in the mines. Under the principle of family responsibility, the family of an offender was compelled to toil alongside him. The motives of this labor were both penal and economic: to punish the criminals and to enable the state to profit by their labor. An ancient writer comments as follows on the conditions of this servitude:

"No attention is paid to their persons; they have not even a piece of rag to cover themselves; and so wretched is their condition that every one who witnesses it deplores the excessive misery they endure. No rest, no intermission from toil, are given either to the sick or maimed; neither the weakness of age nor women's infirmities are regarded. All are driven to their work with the lash till at last, overcome with the intolerable weight of their afflictions, they die in the midst of their toil. So that these

unhappy creatures always expect worse to come than what they endure at present, and long for death as far preferable to life."<sup>1a</sup>

Such is the motif of misery and hopelessness that runs with discouraging monotony through the greater part of the history of convict labor. Society has been so busy coping with other manifold problems and quelling manifold wrongs that it has had little time to devote to considering the welfare of its convicts, even had it possessed the desire to alleviate their lot.

In all Oriental countries captives of war were compelled to labor. A classic example is Samson, the blind giant of the Hebrews, grinding in the prison-house of the Philistines. Samson, however, unlike most servitors, succeeded in reaping an adequate and sweet revenge in taking the blood of his oppressors.

The Athenians occasionally employed convicts in the silver mines of Attica and Thrace; also on fortifications and galleys. They had a kind of public works system.

Roman criminals were disposed of in several ways: First, they were reduced to slavery. Second, they were deprived of citizenship and condemned to labor, usually for life, in the mines of Spain. Spain became a great penal colony. There were at times 40,000 slaves and convicts in the silver mines about New Carthage. Third, they were deprived of civil rights and employed on public works, including roads, fortifications, harbors, and the galleys.<sup>2</sup> The Roman system thus bore several analogies to modern systems. It combined penal and economic motives with a well-developed public-works policy of employment.

China also worked her convicts from very early times. Many were sent to the iron and salt works of the government. Inmates of all prisons were permitted to work at handicrafts of their choice and to enjoy the proceeds of their work.<sup>3</sup> Under the principle of group responsibility, whole families were sometimes condemned to penal servitude as in Egypt. The great Emperor, Che-Hwang-Te, is said to have sent offenders to labor on the Great Wall.

Summing up our meager data on convict labor in ancient countries, we may note these points:

1. It was in the powerful civil states, where primitive vengeance had been pared away, that convict labor was best elaborated and developed on the part of the state. Social-legal sanctions, penalties, and

<sup>1a</sup>Second Annual Report of the Commissioner of Labor, "Convict Labor" (1886), p. 403. The quotation is a translation of a passage from Diodorus Siculus.

<sup>2</sup>Ibid., p. 406.

<sup>3</sup>Ibid., p. 407.

methods replaced those dictated by the spontaneous reactions of groups. Repulsive as the systems were, they were humane as compared with those of later times, and bear some analogies to modern ideas.

2. The public works system as developed proved a worthy prototype of our modern public works system.

3. The prevailing motives of employment were penal and economic, meaning by the latter the profit of the state or sovereign, not that of private individuals. The latter seems a modern concept. The reformatory view is also chiefly modern.

At least one ancient philosopher, however, anticipated our modern idea of the reformatory treatment of criminals. This was Plato. He saw crime as the result of ignorance, which was, in turn, the result of a bad heredity plus a bad environment. Crime was a kind of disease, which the state should cure, if possible. Of course, many severe crimes should be punished capitally, in order to emphasize their wickedness and deter other potential offenders from like acts, also in order to rid society of criminals so hardened as to be essentially un-reformable. But other crimes, of less seriousness, should be punished with the twofold motive of reform for the offending individual as well as of deterrence for other persons. Plato seems to have had education in view as the principal means of reform. He did not specify labor. However, in other connections, he recognized clearly the moralizing effect of labor. Had he but made the final step of connecting labor with penal reform, he would have anticipated modern penology in practically all of its main features.<sup>4</sup>

Nevertheless, the reformatory idea of convict treatment had its main origin in the revolutionary ethics of Christianity, with its insistence upon the redemption from sin of individual wrongdoers. But the idea received little concrete application in penal methods until almost 1700 years after its birth.

Convict labor was practically unknown in Europe almost throughout the Middle Ages. A mere trace of it may be seen in the custom of selling certain criminals into penal slavery. These were luckless individuals who proved unable to pay *bôt*, or make restitution to those whom they had wronged. This custom prevailed up to the twelfth century.

Prisons were places of detention. Notable examples were the Bastille and Conciergerie of France, the Tower of London in England and the dungeons of the Feudal castles. The usual occupants were

---

<sup>4</sup>Barker, *Political Thought of Plato and Aristotle*, pp. 73, 74, 204, 205. Also Jowett, *Dialogues of Plato*, Vol. 5, pp. 223, 235-267.

political offenders. They did no work. Punishments included fines, tortures, and death. Penal detention was infrequent, and penal labor was practically unknown.

With the rapid decay of Feudalism, following upon the Crusades and the Black Death, and the break-up of its concomitant institution, serfdom, we behold the rise of conditions which were to eventuate ultimately, however, in the establishment of houses of correction, institutions specifically adapted to the occupational treatment of offenders. In England the thread of this evolution can be clearly traced.

The landed economy of that country was severely dislocated in the years following the Black Death (1348-49). The class of independent laborers, composed partly of manumitted serfs and partly of those who had fled from the locality of bondage, was able, for the first time, to challenge the market for its services, inasmuch as all labor had been appallingly depleted by the pestilence. There arose a demand for increased wages. But the ideology of the English ruling classes was still entirely Feudal. Ideologies frequently survive the decay of those conditions which give them form and warrant. Hence the demand of the laborers seemed to them presumptuous and anti-social. They attempted, in the First Statute of Laborers (1349, 1351), to compel the workers to labor at the same rate of wages as prevailed before the pestilence.<sup>5</sup> As the workers proved refractory, additional statutes were passed of increasing severity. An incorrigible laborer was to be regarded as a felon and was to be punished accordingly. Statutes were passed in 1357, 1361, 1362, 1368, 1378, 1388, 1402, 1406, 1414, 1423, 1427, 1429, and 1444. All of these re-enacted the original statute, but with varying modifications. They denote, at the same time, the determination of the governing classes and the dogged persistence of those conditions which they were meant to put down. The economic advantage of the laboring class lay in the withholding of its labor. Idleness was, consequently, branded as a crime, and idlers were to be compelled to work. Idlers and beggars were "vagrants." They must not quit the parishes where they lived, but must work for private resident landlords at rates of wages fixed by Parliament. In spite of all this, more and more workers escaped from villeinage with its more or less secure economic status, into the pauper state of the lowest class of the free population.

An act passed in 1547 specified that any vagabond, who remained idle for three days and refused to accept proffered employment, should be regarded as a criminal. He should be branded and should be, for

---

<sup>5</sup>Cheyney, *Industrial and Social History of England*, pp. 106, 107.



two years, the slave of any person (employer) who informed against him. If he ran away for a space of 14 days, he should become a slave for life to the same master. Masters were enabled to bargain with one another for the labor of such slaves. The extreme severity of this law seems attributable to a sudden increase of vagabondage following upon the dissolution of the monasteries, and to the steady increase of enclosures. The situation was quite the reverse of that which had prevailed two centuries before at the close of the Black Death. There was now an excess of laborers rather than a shortage thereof. It was quite out of the question to try to compel laborers to find employment when there was none to be found, at least for a large part of them. Hence the statute proved quite unenforceable and in 1549-50 was repealed.<sup>6</sup>

The situation seemed to demand pressure upon the landlords and employers as well as upon the laborers. Such pressure was provided by a statute of Queen Elizabeth in 1562-63. This law bound laborers for service periods of one year. Rates of wages, hours and seasons of work, and times of meals were all provided for in the statute. The employer who violated these provisions was to be himself regarded as an offender and was to be punished by imprisonment and fine. The actual amounts of wages in each county were to be fixed annually by the justices thereof.<sup>7</sup>

All of the above illustrate the effort of the governing classes of England to cope with evolutionary forces beyond the control of legislation. Villeinage was, by this time, practically extinct. But the poor were to be kept from idleness and their labor power was to be kept under control. It was inevitable that a large part of the former serfs should become law-abiding, self-respecting, industrious city artisans or agricultural laborers. It was equally inevitable that a certain portion of them, of shiftless or criminal tendencies, should continue to be a social nuisance, and to require regulatory legislation. Feudal sanctions had formerly held them all, the good and the bad, in their universal grip. The new legal sanctions of the embryo nation were compelled to differentiate, to limit the effort to control and repress the worthy, and to concentrate rather upon the control of the unworthy.

The distinction seems to have gradually developed in the consciousness of English law-makers. At any rate, after the passage of the above act of Elizabeth, it seems to be reflected in the character of legislation. An act of 1575-76 empowered the justices in every county

<sup>6</sup>Second Annual Report of the Commissioner of Labor (1886), pp. 462, 463.

<sup>7</sup>Ibid., p. 463.

to establish buildings, to be converted into houses of correction, and to provide stocks of materials for working purposes: "to the intent that youth might be accustomed and brought up in labor, and then not like to grow to be idle rogues; and that such as be already grown up in idleness, and so rogues at present, may not have any just excuse in saying that they cannot get any service or work."<sup>8</sup> Failing the effort to compel private employers to put all the idle to work, the state was compelled to essay the responsibility. The willing poor, though largely outside the institutions, and destitute of other employment, should be employed in their own homes. In 1597, cities were given like powers of establishing houses of correction.

Another great act of Elizabeth, in 1601, provided for the establishment, in parishes, of pauper workhouses for the relief of the honest poor. These latter were to be under the direction of overseers of the poor, appointed by the justices of the county. Already the distinction was being made, in legal theory, between the culpable idle and those who were not culpable.

The provisions of the act establishing houses of correction were permissible, not obligatory. Many counties and cities, therefore, delayed to provide for their construction. But a law of King James I, passed in 1609-10, demanded their immediate erection, threatening the justices with a penalty in case of failure to comply. And in 1630, by a law of Charles I, it was directed that in each county, the house of correction, or one of the houses if there were several, should adjoin the county goal and be under a common governor with the latter.<sup>9</sup>

These houses of correction were at first indiscriminately filled with the poor and the unemployed, both the deserving and the undeserving. Gradually, during the seventeenth century, the distinction between the two classes was recognized and provided for. The houses of correction were reserved to the various petty offenders, such as idlers, beggars, tramps, prostitutes, etc., who required punishment and reform by labor. The deserving poor, requiring only relief, came to be provided for in the pauper workhouses. About 1697 the distinction began to be complete, both in legal theory and in actual practice. The evolution was toward houses of correction situated in counties and municipalities and administered by the common authorities thereof; but as regards the workhouses, it was toward their situation in Poor Law Unions (of parishes) and their administration by special authorities (boards of guardians) provided for them. There were usually several

<sup>8</sup>Ibid., p. 465.

<sup>9</sup>Ibid., p. 469.

of these Unions in each county. The final establishment of the Poor Law Unions was in the great Poor Law Reform Act of 1834.<sup>10</sup>

We shall now retrace our steps and note another aspect in which penal servitude resumed its evolution in the Europe of early modern times. This was the employment of convicts as oarsmen on galleys. It was found to be a method of great advantage to the state. "In France during the seventeenth century, the law courts were enjoined to refrain as much as possible from killing, torturing, mutilating, or even fining, their prisoners, in order to provide the galleys with crews."<sup>11</sup> Queen Elizabeth in 1602 appointed a commission whose duty was to arrange that prisoners "except when convicted of wilful Murder, Rape, and Burglarye" should be reprieved from execution and sent to the galleys—

"wherein, as in all things, our desire is that justice may be tempered with clemency and mercy . . . our good and quiet subjects protected and preserved, the wicked and evill disposed restrayned and terrefyed, and the offenders to be in such sort corrected and punished that even in their punishments they may yield some profitable service to the Comon welth."<sup>12</sup>

No doubt the Queen felt that real clemency was extended by permitting criminals to live instead of being executed. The facts proved otherwise. But the real key to the proclamation is contained in the last sentence. The Christian world had discovered, like the ancient Pagan world before it, the potential economic value of convicts. The reformatory idea remained in its chrysalis state in the ethics of that religion toward which these pious monarchs made such show of conformity.

The convict oarsmen, often sentenced for life, were chained to the benches of the galleys. They were nude, shaven, unwashed. Their life was filthy and unhappy in the extreme. But the Spanish convicts did their part at Lepanto in 1571 in shattering the menace of the Moslem Turk. After this battle the galleys were provided with sails as well as oars. The galley became a galleas (*un bâtiment mixte*). Later still the galleon was evolved—a true sailing vessel. Thenceforward the term "galley" was associated with the rotting hulks in French harbors wherein convicts were confined. These galleys as well as the English prison hulks have become a synonym for misery. Prison barracks or *bagnios* were erected also on the shore, and bands of fettered convicts were set to work on fortifications and harbor works.

---

<sup>10</sup>Lowell, *The Government of England*, Vol. 2, pp. 132, 133, 142.

<sup>11</sup>Ives, *A History of Penal Methods*, p. 103.

<sup>12</sup>*Ibid.*, pp. 103, 104.

It was in the seventeenth century that reformatory ideas of convict labor began painfully to struggle to light. This was in connection with the houses of correction. These institutions had begun to be erected after 1550 on the Continent of Europe as well as in England. They were intended for various petty offenders, chiefly misdemeanants. The founder of a spinning-house at Hamburg in 1669 did so because he had "observed that the exposure of petty thieves and prostitutes in the pillory tended to make them worse instead of better" and he desired a place "at his own cost, to the glory of God and the salvation of souls, where they might by labor and religious instruction, be reclaimed both for time and eternity."<sup>13</sup> These reformatory workhouses made the best contribution to the philosophy and methods of convict labor that occurred prior to 1870.

A Pope, Clement XI, gave the reformatory idea of labor a powerful impetus and became the real originator of reformatories as a type of institution when he founded his Hospital of St. Michael at Rome in 1704. This was primarily a house of correction but was limited to young prisoners, men and boys, who received industrial training. On the wall of the institution was inscribed its celebrated motto: "Parum est coercere improbos poena nisi probos efficias disciplina. (It is of little advantage to restrain the bad by punishments, unless you render them good by discipline.)"<sup>14</sup> The penal idea of employment is here conspicuously absent. The disciplinary and reformatory ideas are present and the main method of attainment is through such labor as will not only keep the prisoner occupied but will improve him and specifically fit him for employment on his return to society.

The houses of correction carried forward with considerable success in the eighteenth century the principle of reformatory labor, while the state and local prisons remained sunken in their cesspool of purely penal methods or the exploitation of the convict for the profit of the state. Vilain, the burgomaster of Ghent, in Flanders, and the "father of modern penitentiary science," erected in 1771-1773, a large prison workhouse on the cellular plan. This became the famous Maison de Force. He saw in industry the primary agency of reformation. There should be trade instruction, so that prisoners, on discharge, could earn an honest living. In the selection of prison industries, such should be chosen as would cause least competition with free labor on the outside. He sought for trades not followed in Flanders but which, if followed, might prove profitable to the Flemish people. Among these

<sup>13</sup>Wines, F. H., *Punishment and Reformation*, p. 117.

<sup>14</sup>Second Annual Report of the Commissioner of Labor (1886), p. 409.

occupations were carding, spinning, weaving, tailoring, carpenter work, shoemaking, the manufacture of wool and cotton cards. Prisoners were allowed a percentage of their earnings and the opportunity to do overtime work. They could spend a part of their earnings in prison, but the remainder was retained and given to them on release.<sup>15</sup>

The "father" of the science proved the progenitor of nearly a full-grown child. His influence was widely felt. Howard began his visits on the Continent around 1775. He found the houses of correction in a flourishing condition. In Germany, Belgium, Holland, Italy and even Portugal and Spain, prisoners in these institutions were employed at various trades. At Milan, in Italy, the prison workhouses were nothing less than great trade schools, teaching shoemaking, tailoring, blacksmithing, cabinet-work, wagon-making, wood-turning, leather-dressing, rope-making, nail-making, hand-painting on gauze, etc. Spain employed prisoners in manufacturing articles for sale and paid them a small money allowance therefor. This labor was compulsory. In Germany the houses of correction maintained a great variety of employments. The idea of redemption was fairly prevalent and was symbolized by inscriptions with bas-reliefs placed over the doors of institutions. One of these, at Mayence, consisted of a wagon drawn by two stags, two lions, and two wild boars with a legend to the effect that "if wild beasts can be tamed and induced to submit to the yoke, we must not despair of reclaiming the vicious and teaching them habits of industry."<sup>16</sup>

These houses of correction were the real foundation of modern policies and ideals of convict labor. They embodied the ideas of redemption and reformation, with the fitting of the individual for a useful and upright life. They were run chiefly on the public account system and they instituted the practice of remunerating the convict in money. They laid the basis of prison discipline, classified prisoners, and provided for separate quarters through improved structural arrangements. Unfortunately, they also added to the impetus toward solitary confinement. With this exception, their influence was sane, constructive, and modern.

Meanwhile, the state prisons stagnated. In France special prison bagnios were constructed in the eighteenth century at Toulon, Brest, Rochefort, and Lorient. The inmates were employed at forced labor, including harbor works, and rope and sail making. It is true that they were paid a few cents per day, but their labor was very severe, they

<sup>15</sup>Wines, F. H., *Punishment and Reformation*, pp. 140, 141.

<sup>16</sup>*Ibid.*, p. 118.

were heavily chained, and they were overawed by the presence of loaded cannon in the workrooms. The other prisons allowed their inmates to rot in idleness during the greater part of the century. In 1784, the Bicêtre began to employ a few at menial tasks.

Says Ives concerning the English prisons and gaols of this period:

"And in all these vile places there was generally no production of anything. The prisons and Bridewells were supposed originally to set rogues to work, but the authorities took no trouble to organize it, and throughout the detention places useful employment (if we except occasional work done for the gaoler, or permitted in particular instances) was impossible."

Even in 1818, it was found

"that out of the 518 prisons in the United Kingdom, in 445 there was no employment, and that in the remaining 73 it was of the slightest possible description."<sup>17</sup>

But the houses of correction or bridewells were already deteriorating in the time of Howard. He found employment to be regularly provided in only 35 of them. They were decidedly inferior to those on the Continent.<sup>18</sup>

After 1778 England began the change from old congregate prisons to the new cell prisons with solitary confinement, finding precedents therefore in the Papal reformatory at St. Michael and Vilain's Maison de Force at Ghent. The fine enthusiasm aroused by the English prison reformers, Howard, Fry, Romilly and Bentham, became intent upon solitary confinement with its reformatory possibilities and largely overlooked the reformatory possibilities of labor.<sup>19</sup> Hence, Ives is enabled to refer to the new prisons as "the ghastly whited sepulchers that were built in the nineteenth century."

Solitary confinement spread like a mania in the first quarter of the nineteenth century. Its dominance of the field of prison reform caused the eclipse for several decades of the evolution of occupational therapeutics. Certainly we find in England as the concomitant of solitary confinement those classic instruments of a *penal* servitude—the treadmill and the crank. By a naïve irony, the cell prisons were called Model Prisons and the treadmill and the crank constituted the chief elements of a system of Model Labour.<sup>20</sup>

<sup>17</sup>Ives, *History of Penal Methods*, pp. 20, 21.

<sup>18</sup>Second Annual Report of the Commissioner of Labor (1886), pp. 477-78.

<sup>19</sup>Despite the fact that the reformers had strongly espoused such labor.

<sup>20</sup>Other less famous instruments of Model Labor were the capstan, the shot drill, stonebreaking, and the picking of oakum.

The treadmill was invented in 1818.<sup>21</sup> It was a large upright wheel, the circumference of which was set with a series of steps, and it was rotated by the weight of the bodies of the convicts as they trod upon the steps. The distorted illusion of solitary confinement was so prevalent that sometimes little stalls were built about the wheel so that each convict as he trod could not see or speak to any of his fellows.

The crank seems to have been perfected about 1846. It consisted of a box containing a resistance-producing mechanism operated by turning a protruding crank. Resistance was about 4 to 11 pounds per turn until the mechanism grew heated, when it often rose threefold. In some prisons these cranks were contained in stalls built alongside the wall of the prison yard. In others they were portable and could be brought to the convicts in their cells. The latter co-ordinated well with the general policy of solitary confinement. A daily "stint" on the crank required for adults 14,400 turns or 1,800 per hour for 8 hours. That would allow 2 seconds to a turn. Juveniles were required to give it 12,000 turns per day.<sup>22</sup> Oftentimes prisoners were deprived of their meals if they failed to accomplish these stints.

This description is given such prominence in order to furnish a dramatic example of the difficulty of progress in matters of penology. That England, after having listened to one of the most devoted bands of reformers in history, and having had the seventeenth and eighteenth century example of the houses of correction, could have adopted so reactionary a policy, is astonishing. It is a striking example of what may happen when reform movements become emotional, and when furthermore they are not accompanied and dominated by cool balance and caution and scientific knowledge.

England had in 1776 established her system of confinement for felons at hard labor on the notorious hulks in the Thames River and at Portsmouth and Langston harbors. The convicts were employed during the day in shackles, dredging sand and doing heavy dockwork. The hulks later passed into the hands of contractors. Conditions of life on them became very wretched, but they were not abolished until 1858.

Productive labor in English local prisons (county gaols and bridewells) became gradually more prevalent throughout the nineteenth century. By the time of the centralization of these prisons under national authority in the Prisons Act of 1877, it had become fairly general. There then occurred another astonishing reaction under the

<sup>21</sup>The treadmill was originally intended to turn machinery, but the penal use of it soon became the dominant consideration.

<sup>22</sup>Ives, *A History of Penal Methods*, p. 193.

administration of Sir Edmund Du Cane, who was the chairman of the two bodies who controlled all the English prisons. Say the Webbs:

"The Act of 1877 had not, it is true, expressly prohibited the employment of the prisoners on productive work, . . . But Sir Edmund Du Cane and his colleagues evidently thought that productive employment, coupled with 'instruction in useful trades,' was not consistent with the uniformity of deterrence at which they aimed. . . . Opportunity was taken to bring to an end the various profit-making enterprises of the local prisons. . . . The disagreeable and monotonous task of picking old rope to pieces . . . became, under the Du Cane regime, after the hated tread-wheel and crank, the favourite form of prison labour."<sup>23</sup>

For a full generation such a reactionary policy held control of the English prisons. Finally, in 1894-95, the policy was condemned by a special committee. A new Prisons Act in 1898, with the supplementary rules promulgated under its authority, banished the treadmill and the crank and brought to an end the system of Model Labour. Productive work in association was substituted. The policy was adopted furthermore of producing chiefly for consumption by governmental departments—a state-use system. The influence of the powerful English trade-unions was responsible for this. England also continued employing her convicts liberally on public works. According to Sir Evelyn Ruggles-Brise, there had been some employment of this character even under the Du Cane régime. At all events, in the last generation, the labor policies of English prisons have been thoroughly modernized and have, in some respects, been rendered superior to those of many other countries.<sup>24</sup>

During the nineteenth century the prisons of the European mainland generally employed convicts, at first under the public account system, later with the pressure of economic and other considerations, veering toward the contract system. In 1828 and 1854, France abolished her bagnios and began penal transportation to her colonies. In 1838, she had installed the contract system at several state prisons. By 1886, she was using this system at fifteen central state prisons and houses of correction. At four she was using a public account system. Labor of deported prisoners was auctioned or contracted to settlers in the colonies.<sup>25</sup> Holland in 1886 was trying to teach trades to her convicts and was employing them under contract and public account systems. Belgium was employing 72 per cent of her convicts. About

<sup>23</sup>Webb, Sidney and Beatrice, *English Prisons Under Local Government*, pp. 205-207.

<sup>24</sup>For the present methods, see Ruggles-Brise, *The English Prison System*, pp. 131-141.

<sup>25</sup>Second Annual Report of the Commissioner of Labor (1886), p. 425.



40 per cent of the total number were employed on contracts. Free labor had protested but the government had replied by pointing out its obligation to employ prisoners and by calling attention to the inefficiency of their labor and the narrow margin of profit enjoyed by the contractors. Not enough of the latter could be engaged to enable the employment of all the prisoners. Furthermore, many prison industries were not ones which were carried on outside. Finally, the government produced figures showing that the total loss per man per year suffered by free laborers on account of convict competition was only 39 cents.<sup>26</sup>

Italy continued the public account system until 1868, when she introduced the contract system into eleven prisons. She also employed convicts in agricultural colonies in the Tuscan archipelago. By 1885 the contract system was quite general, but the contractors were obligated to deduct earnings for the prisoners and to teach them trades.

Spain had compulsory labor for convicts on public works in the time of Howard. She also employed criminals in manufactures under the public account system, paying them small money allowances. In 1799 employment was languishing and voluntary, but in 1837 the contract system had arrived and convicts were being driven mercilessly. An English visitor in the autumn of this year, who saw convicts working on a road, testifies as follows:

"The sight that I saw cufld and froze my blood. These thousand men were lent by their government to the contractor, who had engaged to make the road, and were beaten most awfully. They worked, driven to it by blows from the thick sticks of other prisoners, made sergeants, or cabos, because stronger and more brutal than themselves, from morning until night, on one scanty mess of pottage."<sup>27</sup>

Such was the contract system in Spain. It is perhaps an authentic conclusion that it was the rise of this system in Europe, with its political and economic motives, coinciding with the rise of such aberrations of the social mind as the flogging and solitary confinement illusions that delayed for a hundred years the due fruition of those ideas of reformatory labor which arose in the eighteenth century.

We shall now leave the mainland of Europe and follow a separate development which is requisite to the proper understanding of the evolution of convict labor policies as a whole. This is the British system of transportation.

In 1597 a measure was passed by Parliament favoring transportation, and in 1618 there began the shipment of convicts to Virginia to

<sup>26</sup>Ibid., pp. 429-432.

<sup>27</sup>Ibid., p. 415.

appease the demand for laborers on the new plantations. The shipment continued moderately until 1671. Convicts were also sent to the West Indies. In 1717 transportation to America was reopened on a large scale by a special Act of Parliament. Persons convicted of lighter offenses (those within clergy) were to serve for seven years, and those reprieved from execution for graver crimes were to serve for fourteen years. Shipmasters contracted for their transportation, being given a property right in the services of the cargoes. The shipmasters indentured the convicts as servant laborers to plantation owners and derived from the deals a handsome profit.<sup>28</sup>

Convicts were transported in increasing numbers during the eighteenth century. Wars and rebellions in England furnished large numbers of prisoners. Also the penal code was becoming increasingly severe. The gaols and houses of correction could not hold all the prisoners and convicts. Hence the necessity of getting rid of them. England was so annoyed with the problem of numbers that convicts who returned before the expiration of their sentences were summarily executed. Meanwhile, the development of the plantations caused a demand that outran the supply of this labor. The price of indentured convicts went up. Then began the infamous press-gang abuses. Law officers arrested children and young persons on slight pretext, sent them overseas and sold them into servitude, pocketing the money. Private press-gangs kidnapped people and sent them also. Persons high in English political life were interested in this graft. It became a great scandal and was successfully outlawed but the penalties provided were so lenient (involving chiefly fines) that they were not prohibitory. All efforts to increase the penalty—to make it a capital one—failed. The first real check was economic. This was the growing importation of negro slaves into the colonies instead of white servants and the declining price of the latter. Finally the Revolution forced a termination in 1779.

The indentured servants were not well treated. They were often flogged—flogging was common in the eighteenth century. They worked long hours with little food or clothing. At the end of a term of indenture the new freeman was given a little aid; he generally received some clothing, a few implements and tools, and perhaps a few barrels of corn. By a special order of Gov. Howard in 1690, the colony of Virginia granted tracts of fifty acres of land.<sup>29</sup> It is probable that these freed convicts helped to form the basis of the present poor white

<sup>28</sup>Ives, *A History of Penal Methods*, pp. 109, 113.

<sup>29</sup>*Ibid.*, p. 123.

population in the United States. The system of indenture also bears many analogies to the later leasing system of the South.

After the Revolution, England shifted the stream of transported convicts to Australia, beginning in 1787. She set up penal colonies, in which the convicts worked and supported themselves under the government of officials. When their terms were ended they received grants of land. The famous Probation System was set up. In the first stage, the convicts worked about the prisons or places of detention. They felled timber, dragged logs, etc., laboring often in irons, and even being chained together. In the second stage, convict labor-gangs were employed at various places, competing increasingly with free labor as the colonies became settled by freemen. So in 1840 the settlements were shifted from Australia to Tasmania and Norfolk Island.<sup>30</sup> Until 1844 these were the theater of the famous penological experiments of Capt. Alexander Maconochie. But after his departure they lost much of the emphasis on reformatory labor and sank into hells of penal servitude. Even the famous treadmill was introduced, and the Genius of the Rod reigned supreme. Some idea of the meaning of these floggings can be gained from the following report of an eye-witness given by Ives. The witness was passing the whipping triangles at a convict station in the interior of Australia when, as he says:

"I saw a man walk across the yard with the blood that had run from his lacerated flesh squashing out of his shoes at every step that he took. A dog was licking the blood off the triangles and the ants were carrying away great pieces of human flesh that the lash had scattered about the ground . . . The scourger's feet had worn a deep hole in the ground by the violence with which he hurled himself round on it so as to strike the quivering and wealed back, out of which stuck the sinews, white, ragged, and swollen. The infliction was one hundred lashes at about half-minute time, so as to extend the punishment through nearly an hour. . . . they had a pair of scourgers who gave each other spell and spell about, and they were bespattered with blood like a couple of butchers."<sup>31</sup>

So men treat their brother men when the former are brutes and the latter are in their full power at out of the way places of the world where the eye of the public does not see. We may well conclude that convict labor, if it is going to be reformatory and successful, must be conducted where the stern gaze of impartial spectators is ever-present and there are no doings in secluded crannies that cannot be brought into the white focus of public opinion. Even then the task

<sup>30</sup>These had been penal settlements before, but not on so large a scale.

<sup>31</sup>Ibid., p. 152.

is a baffling and uphill one. But in the Norfolk Islands of the World, within the high thick walls of unvisited prisons, in rotting off-shore hulks, and in lumber and turpentine camps situated in the dark thickets of Southern forests—in such places, we may remain assured, there can be no hope at all.

We have now traced the history of convict labor well up into modern times and have witnessed the rise and counter-play of varied motives and policies. We have seen the growth of public-works, public account, leasing or indenture, and contract systems. And we have seen the reformatory motive rise in the eighteenth century, only to wane later on in competition with the penal and economic motives. We shall examine more closely in the next chapter the nature of the various systems of employment, previous to tracing their development in the United States.

## CHAPTER II

### A SURVEY OF THE PRINCIPAL SYSTEMS OF CONVICT EMPLOYMENT

The principal systems of employment and the order in which we shall examine them are as follows: public account, contract, piece-price, lease, state-use, and public works.

The first of these, the public account system, has usually in history, immediately preceded the introduction of the contract system. We shall later examine the reasons for this. Under public account, the institution carries on the business of manufacturing like a private individual or firm, buying the raw materials and converting them into manufactured articles, which are sold in the best available market. The system presents a considerable number of advantages:

1. All profits go to the state.
2. No special advantages accrue to certain individuals as manufacturers over other manufacturers.
3. The convict labors for the state (it is claimed) with more spirit than for any private profiteer.
4. There is a complete, unbroken state control and authority over the convict.

On the other hand, the system has some obvious and serious disadvantages. The first of these grows out of the fact that the prison industries are managed by the prison officers. It is very difficult to secure men who are competent as wardens and also efficient as business administrators. The problem is further complicated by the diversification of prison industries usually attendant upon the system. Wardens

are unwilling to be practical business men, and practical business men are unwilling to be wardens, with their precarious political tenure of office and their none too lavish salaries. In the second place, the goods produced can be sold at low prices since there is no charge for wage-payments to labor. Hence the state can easily undersell the normal market price and so reduce it and reduce with it the wages of free labor. The state has not been above doing this, as free laborers discovered a hundred years ago. Attempts have been made to compel the state by law to sell at the market price. But this is a difficult proposition, for the prison goods are usually inferior in quality to those made by free labor and if they are put on the market at the same price as the latter, customers will prefer the latter, and the prison goods will not find ready sale. This annoys prison officials, who have no place to store goods, and who will tolerate no accumulation on their hands of unsold goods. This introduces us to the third main disadvantage of the system. In dull times prisoners are laid off altogether. These seasons of unemployment are directly at variance with the whole theory of convict employment, whether one surveys it from the penal, economic, disciplinary, or reformatory angle. Prisoners should be employed steadily, not intermittently.

Among the leading industries that have been carried on in the United States under the public account system are binding twine, bags, boots and shoes, brooms and brushes, and furniture. Farming and coal mining have also been conducted under this system.

The second main system is the contract system, which began to supplant the public account system nearly a century ago both in Europe and in the United States. Under this system the prisoners are commonly (though not always) employed within the prison. But they are not employed by the prison officials. Instead, these officials, under legal regulations, advertise for bids for the employment of the convicts, and the contract for such employment is let to the highest responsible bidder. The contractor pays the state a certain price per day, that stipulated in the contract, for the labor of each convict. The contractor or his agent enters the prison workshops and runs them during the working day. During such time, the convicts are under the partial control of the contractor,<sup>32</sup> though they remain at all other times under the complete control of the prison officers and guards. The machinery and power in the workrooms are frequently furnished by the state, but the lighter tools and the raw materials are provided by the contractor, who also manages entirely the marketing of products, securing what-

<sup>32</sup>The prison guards commonly remain in the workroom.

ever profits he can thereby. The length of contracts has usually been from five to ten years.

The contract system presents some advantages which are especially notable in comparison with the public account system:

1. Under it, convicts are much more regularly employed, as the contractors are much abler business men than the prison wardens.

2. It is very remunerative to the state. The institutions which employ this system are able to realize sums equal to 65 per cent of their current expenses, whereas, under the public account system, the income has seldom ever been more than 32 per cent of current expenses. This is perhaps the chief reason why the system has been so tenacious in our prisons.

3. The state is able to avoid all business risk and the prison officials are able to avoid all labor and business administration. This is not at all displeasing to the prison wardens, who have commonly favored the system, thus furnishing another powerful influence for its retention. It must be admitted that it enables the wardens to concentrate on other features of prison management and to become more efficient therein. Furthermore, it is easier to secure men for wardens when they do not have to combine business ability with the other requisite abilities.

All of these advantages are real and very effective in their appeal to legislatures, government officers, and politicians. Add to this the fact that the contractors themselves find the system very profitable, and use all their influence for its retention, and it begins to be clear why the system has successfully withstood a half-century of incessant attack and why in 1910, about half of our states were still committed to it.

The system has three marked disadvantages:

1. It is hardly meet that the inmates of public prisons, who, although they are convicts, are nevertheless the wards of the state, be subjected to a species of conspiracy between the state and private individuals, to exploit their labor for mutual profit.

2. The competition with free labor is at the maximum under this system. This is an inevitable corollary of its productive efficiency.

3. The reformatory aspect of labor languishes or is lost sight of in the shadow of the profits aspect. In this connection, we may cite the following pertinent passage from a study of this system:

"Some curious circumstances are related of the moral features of the contract system, or rather of features which tend to demoralize the convict. The writer remembers an instance of a man sentenced to an eastern

prison for obtaining goods under false pretenses, and he was at once set at work making shoes, in which the spaces between the inner and the outer soles were filled with paper instead of leather. The reformatory aspects of such labor are not discernible, for the convict and all working with him could not help drawing the conclusion that the contractor should be at work by his side."<sup>33</sup>

The above example surely does not illustrate the generality of contract systems. But the profit motive, nevertheless, will not blend with the reformatory motive. This has long since become a commonplace with our prison reformers.

The third system, one which has been relatively uncommon, is the piece-price system. This system is merely a modification of the contract system, and in it efforts have been made to meet some of the objections to that system. In the first place, the convicts remain under complete supervision of the prison officers in the workshops. This is thought to be an aid to reformatory efforts. The contractor or his agents does not enter the prison at all. They merely deliver the raw material at the workshops and receive back the finished articles, paying therefor a certain price per piece. This latter feature marks a second difference from the contract system, where the price paid is for the day's labor of a prisoner. Under both systems, small payments of money are frequently made to prisoners for overtime work. But the payment of this money by the state under the piece-price system is held to be more stimulating to the prisoner than direct payment by the contractor. However, prisoners are not commonly so naïve. They know well enough that they are being exploited under either system. The advantages claimed for the piece-price system over the contract system turn out to be chiefly illusory. And it is clear that it possesses in practically equal degree all the characteristic disadvantages of the latter system.

The fourth main system and the most remarkable of all, in many ways, is the leasing system. Under it the state temporarily abdicates almost all direct supervision and control of the convicts. They are leased to a contractor, better called for purposes of distinction a lessee, for a specified sum and for a fixed period. The lessee undertakes to clothe, feed, and care for the convicts, and to maintain proper discipline among them. He may take them wherever he needs them to perform the work he wishes them to do. The nature of this work is usually stated in the terms of the lease. The system has some attractive advantages:

1. It is the most remunerative of all systems. It commonly

---

<sup>33</sup>Second Annual Report of the Commissioner of Labor (1886), p. 379.

yields to the state an income equal to three or four times the expense incurred. As the latter is next to nothing, the price paid by the lessee may be very low, yet enable the state to realize handsome profits, while at the same time affording the lessee a big margin in labor costs over the employers of free workmen. The effect of such an advantage in favoring the retention of this system scarcely needs emphasis.

2. The state is not only relieved of the cost of maintaining convicts and even of maintaining institutions for them, but is also very largely relieved of responsibility for them. Hence politicians and prison officials favor it.

3. Prisoners are usually kept in open prisons and stockades. This is held to be advantageous to their health and comfort, especially in the South, where the system has been most prevalent. This is a real advantage and, in the reform of the leasing system, every effort has been made to retain it.

But the disadvantages of this system are numerous and rather condemnatory:

1. It places pecuniary interests in conflict with both humane and reformatory motives.

2. The brutal guards hired by lessees persist in inflicting severe punishments, often archaic, and to a degree greater than is contemplated by the laws. Furthermore, the law is often stretched or disregarded by collusion between law officers and lessees to inflict excessive terms for minor offences so that the victims may supply the need of the lessees for more cheap laborers.

3. Sheriffs and judges obtain graft through the above malpractices undertaken to supply cheap laborers to the lessees.

4. It renders impracticable the proper care by the state for the health of its prisoners, and it also hinders their proper separation according to classes, sexes, and conditions.

5. It places convict labor, in many instances, in direct competition with free labor.

6. The chances of reformation are reduced to a minimum. It involves the most outright exploitation known to any system and the most dishonorable indifference on the part of the state to its duties and responsibilities.

The fifth principal system of convict employment is the state-use system, which began to come into considerable use in this country only about thirty years ago, and is specifically designed to obviate most of the serious disadvantages of other systems. Under it, the state penal institutions manufacture products, but these, instead of



being placed on the general market in competition with the products of free labor, are either consumed by these institutions themselves or sold exclusively to the other institutions of the state. In one or two features, it resembles the public account system. It places again upon prison officials the duty of manufacturing superintendence, but it relieves them of the effort of trying to place the goods on the open market. It meets the approval of free labor, even though indirectly there remains a trace of competition in that there is some curtailment of the market for the products of free labor resulting from their exclusion from purchase by state institutions. Best of all, it is entirely consonant with maximum emphasis on the reformatory motive in employment. Convicts under it are really serving the public and themselves, not private profiteers; better systems of wage-payment are practicable if desired; and trades-education is almost inevitable, since the state institutions require a variety of products, and, to supply them, a variety of trades and machinery must be installed. The unfortunate feature of the system is its expensiveness and lessened profitableness as compared with, for example, the contract system. Hence the question of its installment in any state, compels the reformatory motive, in the minds of politicians and legislators, to undergo a lively conflict with the motives of cupidity and economy.

The sixth system, the public-works system, is really a form of the state-use system. There are two reasons for distinguishing it in an up-to-date category. Although the prisoners are employed by the state, for its own profit, they are most frequently employed away from institutions, unless they are erecting the institutions themselves. Also the public-works system, along with state farms, offers the best alternative to the leasing system in the South, where the state-use system, insofar as it would necessitate confining the convicts within institutions, meets valid objections from the standpoint of health. It is far preferable to employ the convicts out of doors.

This survey of the leading systems will enable a better understanding of their evolution and history in the United States. The latter will be considered in the next chapter.

### CHAPTER III

#### CONVICT LABOR IN THE UNITED STATES BEFORE THE CIVIL WAR

The first English colonists in the New World, the Cavaliers and Puritans, were men who adhered to well-established codes of personal conduct. Moreover, the conditions of frontier life so selected men of

moral quality, so reinforced individualism and equality, and so encouraged a natural and free rather than a legal and repressive order of society, that both penal law and penal institutions were relatively unnecessary. The main problem actually faced arose not so much from these bona fide settlers as from the presence of indentured convict servants, whose criminal traits were the occasion of perhaps most of the earlier penal legislation. Insofar as this legislation embraced labor, its motives were penal and restitutional. The reformatory idea was not materially considered.

Almost throughout the colonial period, up to the opening of the nineteenth century, the control and utilization of convict labor was personal and local. There were two chief methods—the system of indenture, and the employment of inmates of local houses of correction. The indenture was really a lease. It was first imposed for theft. A person convicted for this offense was required to make a threefold or fourfold restitution of the value of goods stolen. If he could not do this, his service was sold for a brief time to any citizen under terms specified by the local court. The proceeds were applied to restitution. The offender remained during the term of his indenture as a penal servant under direct control of the lessee who employed him where he wished.<sup>34</sup> Here is a further root of the later leasing system of the South. The device was employed by Massachusetts, New Hampshire, and Connecticut. Virginia had, from 1643 to 1672, prohibited all penal servitude for native offenders. Possibly the reason for this was the desire to distinguish between the native freemen and the foreign-born indentured servants, who were becoming numerous in the colony. But in 1727 she passed a law to the effect that persons convicted of vagrancy might, at their option, receive twenty-five lashes at the public whipping-post or be bound out to service for one year. This is a further illustration of the indenture.

The other method of utilizing convict labor was through the local town or county houses of correction. The control and utilization was public in the local sense or personal. The relatives of the misdemeanants or (in case they were servants or apprentices) their masters, were required to supply them in the houses of correction with the materials and tools of employment. The proceeds to the amount of 8 pence in the shilling went to defray fines and costs of keeping, which were charged to the prisoners. If the prisoners were unable to work, the costs had to be paid by the relatives or masters directly. If inmates

<sup>34</sup>Hiller, "Development of the Systems of Control of Convict Labor in the U. S.," *Journal of Criminal Law and Criminology*, Vol. 5, p. 243.

had neither relatives nor masters, the wardens employed them and paid the proceeds into the public treasury.<sup>35</sup>

These two systems lasted until nearly the end of the eighteenth century. They may be said to constitute a primary stage in the evolution of convict labor policies in this country whereby the control and utilization were personal and local. The second stage came in the last decades of the eighteenth century with the development of new state prisons and county jails and a public account system of employment for the inmates.

The laws of Pennsylvania at its founding in 1682 had contemplated hard labor as a penalty for crime but the provision was not carried out, and in 1717 the provincial prison presented the same spectacle of associated idle confinement to be seen in English and Old World prisons. A Connecticut act in 1713 required publicly supervised labor for prisoners in county jails, but the law was obeyed only half-heartedly. After 1773, Connecticut employed an old copper mine as a provincial prison. The convicts were placed at night in little wooden pens in the underground caverns, with their feet fastened to iron bars and their necks chained to beams in the roof. These convicts were felons. They were at first employed during the day at mining, but, as they used the tools in efforts to escape, the occupation was changed to the making of wrought nails. This mine prison was not finally discarded until 1827, though during the later years work-rooms above ground were available.<sup>36</sup>

The coming of the Revolution enabled the colonies in 1779 to shake off the poisonous streams of indentured convicts. About the same time the prison reforms in England of John Howard began to reverberate in the New World. They found sympathetic echo in the hearts of American Quakers. In 1786 Pennsylvania abolished capital punishment.<sup>37</sup> She began to employ her convicts in gang labor along the public ways. They were shackled by fetters and iron collars and had their heads shaven. The sight proved demoralizing to the public, while the exposure and shame hardened the convicts into sullen ferocity. Public opinion was stirred up in opposition to this method of employment, being stimulated thereto by the protests of the Society for Alleviating the Miseries of Public Prisons, an organization first formed in 1776 and revived in 1787. The system was abolished.

<sup>35</sup>*Ibid.*, p. 244.

<sup>36</sup>Wines, F. H., *Punishment and Reformation*, pp. 152, 153, *Second Annual Report of the Commissioner of Labor* (1886), pp. 504, 505.

<sup>37</sup>A very common penalty in the colonies as in England during the eighteenth century.

Henceforward, the evolution of convict labor was fated to be for a long period associated with the evolution of another feature of prison life, namely, solitary confinement. Indeed, the hopes of progressive penologists for the reformation of convicts tended to become attached rather to solitary confinement than to employment. This was unfortunate from every point of view. Not until after more than a half-century were the healing researches of scientific psychology destined to disabuse penologists of their pathetic illusions regarding solitary confinement, and to enhance properly the reformatory imminence of labor.

The system of solitary confinement began in England in 1778 under the influence of Howard and others. In 1790 it was introduced to America, Pennsylvania again being the innovator. The Walnut Street Prison was constructed in Philadelphia with thirty solitary cells.<sup>38</sup> No employment was provided for at first. Maine and Virginia began experimenting with confinement of prisoners in solitary cells underground.

In 1796, New York erected the Newgate Prison adapted to house convicts on the principle of solitary confinement. Labor was provided for on the public account system, including boot and shoe making and iron work. In 1797 Virginia opened at Richmond a prison adapted to similar ends. Thomas Jefferson was instrumental in securing its erection.

New Jersey in 1799 and Massachusetts in 1802 repealed the old laws requiring parents and masters to furnish employment to servants or wards imprisoned in houses of correction. County jails were being erected, also state prisons. New Jersey erected a state prison in 1798 and Massachusetts followed in 1805. In both jails and prisons there was to be employment for inmates, all on the public account system.

At length, in 1816, New York began the erection of the great Auburn Prison. Convicts aided in the work. In 1818, the prison was partially ready for occupation. At first, the convicts were employed during the day in association in workshops and were confined by couples for the night. But in 1819 the method of nocturnal confinement was changed to that of a separate cell for each convict, but the feature of associated labor during the day was retained. This was the famous Auburn System, perfected by Elam Lynds, who became warden in 1821. He originated the rule of silence during the day in the workshops. He was a man of great ability as a penal administrator. In 1825, under authority from the state government, he led a hundred convicts to Mount Pleasant and began the erection of Sing Sing Peni-

---

<sup>38</sup>Ives, *A History of Penal Methods*, p. 174.

tentiary. This entire work was accomplished substantially by convict labor.<sup>39</sup> Acting on this experience, New York nearly twenty years later, in 1844, erected the Dannemora Prison also by convict labor. These are outstanding early examples of employment on public works.

The great opposing system of the times was that of Pennsylvania, originated in the Eastern Penitentiary, which replaced the old Walnut Street Prison at Philadelphia in 1829. Employment under public account had been introduced into the latter prison. Employment was to be continued in the new prison but only in the separate cells of the inmates. There was to be no association at all. A similar plan was adopted in the Western Penitentiary of Pennsylvania at Allegheny in 1829. Solitary confinement thus reached in this system its most classic expression.

The prisons erected in other states followed in the main the Auburn Plan.<sup>40</sup> The Pennsylvania Plan favored the continuance of the public account system of employment to which that state long adhered. But the Auburn Plan, with associated labor in workshops, was especially favorable to the introduction of the contract system.<sup>40</sup> This latter system had been introduced in Massachusetts as early as 1807. The Auburn Prison adopted it in 1824, Connecticut in 1828, Ohio in 1835. Let us now see what further reasons there were for the adoption of this system.

Most of these hinge on the fact that the public account system proved economically unsatisfactory. The products were inferior in quality to those of free labor, commanded a small and inadequate market, and yielded so small an income to the prison authorities as to incur a chronic deficit in the management of the prison industries. The lack of an adequate market was intensified by the meagerness of transportation facilities. Furthermore, the prisons relied on handicraft occupations, whereas on the outside the rapid development of machine industry and the Industrial Revolution enabled a forcing down of prices, which of itself, almost shut off the prison products from sale. The prisoners could not even be employed at all for a large part of the time, as there was no sale for the output. This balked the second chief motive of employment, which was that it should be regular and re-

---

<sup>39</sup>Sing Sing later became a center of the stone-cutting industry for state-use. Free stone-cutters developed a spirit of bitter opposition. See McMaster, *History of the People of the U. S.*, Vol. 6, p. 101.

<sup>40</sup>There was a contrary evolution in the English prisons. There the Pennsylvania Plan won more favor than the Auburn Plan. Perhaps this accounts for the fact that the contract system never won much of a hold in the English prisons; also for the fact that the latter were much tardier than the American prisons in checking solitary confinement and introducing reformatory labor.

formatory. Prison discipline societies and progressive wardens desired a system whereby all these disadvantages could be obviated. What was really required was an arrangement whereby men could be placed in charge of the prison industries who would possess entrepreneur talent in management and organization and could meet and overcome the handicaps just enumerated. Men who were at once good prison wardens and also business men of the requisite ability were not forthcoming. Hence the resort to the contractors.

Nevertheless, the arrival of the contractors was not unaccompanied by misgivings on the part of the more honest, far-sighted, and able of the prison administrators. Among these were such men as Elam Lynds and Gershom Powers of New York, and Amos Pillsbury of Connecticut. Mr. Lynds remarked to De Tocqueville, the eminent French scholar and reformer, who studied American prison systems, that he was in constant fear that the presence of the contractors in the prison would, sooner or later, lead to the total ruin of the discipline.<sup>41</sup> Powers reported to the New York legislature in 1828: "This mode of employing convicts is attended with considerable danger to the discipline of the prison, by bringing the convicts into contact with contractors and their agents, unless very strict rules are rigidly enforced."<sup>42</sup> Pillsbury charged in 1839 that the system was "Destructive to everything which may be called good, both as it relates to the institution and the prisoner."<sup>43</sup>

It must be recalled that these men were bona fide wardens. They were reformers in their way, although they depended chiefly, for the accomplishment of reform, on solitary confinement accompanied by an exceedingly severe and strict system of discipline. They saw labor in its reformatory aspect but tended to minimize it to a mere adjunct of their system of discipline. Hence we may say that the prevailing motive in their minds for convict employment was disciplinary. Furthermore, this disciplinary idea included the concept that through labor the problem of governing and controlling convicts could be advanced toward solution.<sup>43</sup>

After a few years of the contract system, wardenships began to be increasingly the objects of political appointments. The contractors were largely responsible for this, inasmuch as they desired wardens

<sup>41</sup>De Beaumont and De Tocqueville, *Penitentiary System in the United States*, p. 36.

<sup>42</sup>Wines, E. C., *The State of Prisons*, p. 109.

<sup>43</sup>Perhaps the most advanced penologist of the time was Edward Livingston. Even he regarded labor as but a privilege in the prison to be attained through obedience to the discipline. See his *Code of Reform and Prison Discipline*, pp. 106, 107.

who would not interfere with their purpose of exploiting convict labor regardless of either discipline or reform. Hence reformatory labor passed, under this system, into a species of somnolence from which it has long struggled to emerge and has not even yet attained entire success in the effort.

The contract system has been discussed so fully in the preceding chapter that a further consideration here of its merits and defects would constitute mere repetition. However, it must be said that for the time it marked a real advance. As business managers, the contractors made good. They wiped out the deficits in the prison industries and began to produce a net income. They secured the installment of up to date machinery. In fact, under them, the factory system entered bodily into the prisons. They enabled regular employment of convicts. They succeeded in marketing the product. The contract system as a result spread widely and became, through the middle of the century, almost the universal system of prisoner employment. By 1867, the public account system was retained in but three state prisons, those in Maine and Wisconsin, and the Clinton Prison of New York. It was partially used also in New Hampshire. The contract system prevailed everywhere else except in some Southern states, where the lease system was then being introduced.<sup>44</sup>

Further eloquent testimony to the increasing success of prisoner employment under the contract system is embodied in the increasing protest of free labor.<sup>45</sup> As early as 1823, journeymen cabinetmakers in New York City protested against the introduction of prison-made goods. In the same year the mechanics of that city presented to the legislature a petition for the abolition of competitive convict labor. Said they: "Your memorialists have seen the convicts . . . hired out to individuals, in some instances at reduced compensation, and in others employed for the benefit of the state, and the products of their labor thrown into market and disposed of at a price very little above the cost of materials of which they were manufactured, to the ruin of" free workers.<sup>46</sup> They thought prisoners could be best employed in a state marble quarry. We have seen that the effort of the state government to follow out this suggestion at Sing Sing after 1825 did not, nevertheless, satisfy the workers. It merely created a new class of the disaffected.

<sup>44</sup>Hiller, "Development of the Systems of Control of Convict Labor in the U. S.," *Journal of Crim. Law and Criminology*, Vol. 5, p. 255.

<sup>45</sup>See p. 43 above, footnote, for an example of labor protest.

<sup>46</sup>Commons and Associates, *History of Labor in the U. S.*, Vol. 1, p. 155.

A labor paper in 1830 quoted lists of prices to prove that prison goods were underselling those produced by free labor. The free laborers were then engaged in a severe struggle with the rising merchant-capitalists. The aim of the latter was to force down all costs, including labor-costs, to the minimum. Hence they resorted freely to the employment of cheap prison workers. The free workers saw the extension of opportunity by the state to many merchant-capitalists under the contract system for such ends as a mortal offense to their own dignity and welfare. Much bitterness was mingled with their protests. A convention of mechanics at Utica in 1834 declared that "hundreds of mechanics are thrown out of employment and, in many cases, their families are reduced to beggary." That the new system was indeed proving lucrative is shown by the fact that in 1835, Sing Sing prison, for example, had a net profit of nearly \$29,000.<sup>47</sup>

The New York Trades' Union, organized in 1833, began a sustained legislative campaign for the suppression of the competition from prison-made goods. The following year, the State Legislature yielded to their pressure and created a special commission of three men to investigate prison labor, making Ely Moore, president of the Union, one of the appointees. The trade unionists found themselves in opposition to the humanitarian reformers, who favored the contract system by virtue of its provision of regular employment of prisoners. The commission eventually reported in favor of the prevailing system as a whole. Free labor lost probably the most important of its early skirmishes in what was destined to prove a long and bitter contest. A public meeting of the workers denounced the report. Their leader, however, supported it and, for the time, the opportunity was lost.<sup>48</sup>

Henceforward, for some thirty years, labor was able to make little effective protest against convict competition. There was a long period of business depression, beginning in 1837, the unions were overthrown, and the workers turned to political and agrarian agitation. Not until the sixties, with the rapid development of new, powerful, national unions, was the subject of prison labor effectively revived. The strength of their organizations then enabled labor once more to compel attention.

The contract system encountered little effective opposition from alternative systems. There was scarcely anything more than experimentation in that direction. In Massachusetts in 1828, for a few months only, the piece-price system was tried out, the first example

---

<sup>47</sup>Ibid., p. 347.

<sup>48</sup>Ibid., pp. 369, 370.



of its use. Prisoners constructed kegs from staves and headings previously prepared. But the state speedily returned to the contract system. A few states also used a form of lease system. We have seen that this system had prototypes in the system of indenture, both of convict servants from Europe for long terms, and of misdemeanants for short terms by colonial authorities to enable their wages to be applied to restitution. Massachusetts in 1798 authorized the hiring of prisoners from houses of correction to any person near enough to the prison that the officers might retain a general supervision of the convicts. In 1825, Kentucky went farther and leased her state prisoners to an employer who received full control of their care and discipline as well as their labor. The lessee took charge of the state prison, conducted it, and paid to the state a certain percentage of the net earnings accruing from the labor of the convicts. Also in Missouri and Illinois, the lease system was in use prior to the Civil War.<sup>40</sup> So the main credit for the original development of this system belongs rather to northern than to southern states.

During the Civil War the prison industries flourished greatly. The manufacture of army supplies was carried on in them. Contractors became very wealthy and even the prisons operated on public account showed an ample profit. But in the trough of depression following the Civil War, the prison industries dropped to the lowest ebb. The new national trade unions, also none too prosperous, savagely renewed the onslaught of free labor against convict competition. At last they received the benefit of a determined attack upon the contract system by the prison reformers and penologists.

Before this time, as we have noted, penologists had favored this system. They had directed the brunt of their reforming efforts against the political appointment of wardens. Through their two leading organizations, the Boston and Philadelphia Prison Discipline Societies, they had waged a bitter controversy over the respective merits of the Auburn and Pennsylvania systems of confinement. In consequence of the investigations of the Frenchmen, De Beaumont and De Tocqueville, and of the Englishman, Wm. Crawford, the struggle had even been carried overseas. The youngest professional organization of penologists, the New York Prison Association, had been formed in 1846. In 1862 Dr. E. C. Wines became its secretary. This gentleman, aided by two others, Dr. Theodore W. Dwight and Mr. Z. R. Brockway, was chiefly instrumental in inaugurating new reform movements. These will be reviewed in a later chapter.

<sup>40</sup>Hiller, *op. cit.*, p. 254.

Finally, we may note the gradual waning of the faith in solitary confinement. Prison physicians began as early as 1844 to have suspicions of the connection between it and insanity.<sup>50</sup> The passing of the faith in solitary confinement and rigid discipline as means of reformation left a gap in the schemes of penologists which was speedily filled by other ideas, including an enhanced appreciation of the reformatory value of labor.

## CHAPTER IV

### THE LEASING SYSTEM

The mechanism of this system has already been explained and criticised. The purpose of this chapter is to outline something of its history and results in practice.

It was not originally developed in the South. Indeed, the penal problem of the Southern States, prior to the Civil War, was relatively slight. The large negro population was chiefly left to the disciplinary measures of the owners.<sup>51</sup> The state prisons were small, contained few inmates, and there was little systematic effort to employ the prisoners. In 43 years prior to 1860 in Georgia, only 1,600 convicts, including both felons and misdemeanants, were committed to imprisonment.<sup>52</sup> But the Reconstruction Period inaugurated a great increase in criminality. The free negroes now had to be handled by the civil authorities. There was the usual moral letdown following a war, and the conditions of lawlessness and semi-anarchy became quite serious. The South was unprepared for the new problem. Her penal institutions were quite inadequate for the confinement of the large crop of criminals, and the States could not undertake, in their poverty, to build new ones. In Georgia, the old state prison at Milledgeville had been destroyed by Sherman's army. Other states had also, no doubt, suffered the destruction of a part of their penal institutions. Furthermore, the states were under the control of Federal military governors, who were men accustomed to summary methods of dealing with problems.

The first state actually to lease out convicts was Mississippi in 1867. The lessees were to employ them on railroads and levees. Louisiana followed in 1868, the action being approved by General Han-

<sup>50</sup>Wines, E. C., *The State of Prisons*, p. 26.

<sup>51</sup>Except for capital punishments.

<sup>52</sup>Alexander, "The Convict Lease and the System of Contract Labor," *The South Mobilizing for Social Service* (Sou. Soc. Cong., 1913), p. 167.

cock, the Federal military governor.<sup>53</sup> In Georgia in the same year, the Federal governor, General Ruger, farmed out two batches of negro convicts for a year for \$3,500. In 1869, a fresh lease was made of 500 convicts. This was done by Governor Bulloch (the "scalawag" governor) without legal authority. The legislature gave approval two years later. In 1876 Georgia made her first twenty-year lease.<sup>54</sup> By 1878 Tennessee, North Carolina, Florida, Texas, Arkansas, Alabama, South Carolina, and Kentucky were fully committed to the system.

The system very shortly became corrupt. The double root of this corruption consisted in its profitableness to the lessees and in its yield of revenue to the states. It became so tightly fastened on the South that its rooting out has since proved an exceedingly serious task. The fact that the bulk of the victims are negroes brings in the further complication of the race problem. The arousing of public opinion in the South over the fate of negro convicts has proved to be a most difficult thing. The memories of slavery, the experience of misrule under the "carpet-baggers" and the new freedmen, and many an ineradicable prejudice, has stood in the way of the development of the requisite antagonism of public sentiment. The indifference of the Southern public over many years was only equalled by the satisfaction of the lessees with the system which proved such a source of gain to themselves. Indeed, it was only when the system over-reached itself and began reaching out for white victims as well as colored that public opinion began stirring in its lair. Even then, it proved most difficult to get the real facts before a public that was inclined to listen to them with amazement and incredulity, not believing that such things were possible at this stage of the moral progress of the world.

The appalling nature of the system can be further grasped when we remember that in its legal fundamentals it involves the "delegation by the state to individuals or corporations of the power to punish crime by hard labor."<sup>55</sup> The combination of this species of legal carte blanche with the profit motive in the minds of lessees led at once to an exploitation that deserves to rank with that of the old Egyptian taskmasters in the annals of Scripture.

It is impossible to review all the details of this system in practice in the several states or to narrate the events that marked the bitter and prolonged struggles to eradicate it. High-minded men who were

<sup>53</sup>Wines, F. H., "Twenty Years' Growth of the American Prison System," *Proceedings of National Prison Association* (1890), p. 85.

<sup>54</sup>*Ibid.*, p. 86.

<sup>55</sup>McKelway, "Three Prison Systems of the Southern States of America," *Correction and Prevention* (Russell Sage Foundation), Vol. 2, pp. 71, 72.

able to know or learn the facts of its operation have fought it in the South almost from the moment of its inception. One of the most prominent of these has been the great novelist and former Confederate soldier of Louisiana, George W. Cable. Before the National Conference of Charities and Corrections in 1883, he read an essay on "The Convict Lease System in the Southern States." This essay was later (in 1885) reprinted in his book, "The Silent South," in addition to finding publication in several periodicals. It formed the first major revelation to the nation at large of what was taking place. It inaugurated a steady cannonade of criticism against the system from opinion-forming agencies. It may be well to note the principal findings of Mr. Cable's essay. They were in no sense based upon opinion, but upon solid facts drawn from the reports of the very governors and prison boards under whom the system was operated. He said:

"There never was a worse falsification of accounts than that which persuades a community that the system of leasing out its convicts is profitable. Out of its own mouth—by the testimony of its own official reports—what have we not proved against it? We have shown:

1. That by the very ends for which it exists, it makes a proper management of prisons impossible, and lays the hand of arrest on reformatory discipline.
2. That it contents itself, the state and the public mind, with prisons that are, in every way, a disgrace to civilization.
3. That in practice it is brutally cruel.
4. That it hardens, debases and corrupts the criminal, committed to it by law, in order that, if possible, he may be reformed and reclaimed to virtue and society.
5. That it fixes and enforces the suicidal and inhuman error, that the community must not be put to any expense for the reduction of crime or the reformation of criminals.
6. That it inflicts a different sentence upon every culprit that comes into its clutches from that which the law and the courts has pronounced. So that there is not today a single penitentiary convict, from the Potomac to the Rio Grande, who is receiving the sentence really contemplated by the law under which he stands condemned.
7. That it kills like a pestilence, teaches the people to be cruel, sets up a false standard of clemency, and seduces the state into the committal of murder for money.
8. That in two years it permitted eleven hundred prisoners to escape."<sup>56</sup>

Such are his conclusions, uttered in sufficiently restrained language. He found that in three states, Mississippi, Arkansas, and

<sup>56</sup>Cable, "The Convict Lease System in the Southern States," Proceedings of National Conference of Charities and Corrections (1883), pp. 296, 297.

Louisiana, there was not even a printed report on the prison system or statistics. He unearthed the practice of subleasing. He found the punishments of flogging and the shackles to be prevalent, and the stocks to have been brought into use in Texas and elsewhere.<sup>57</sup> When a prisoner was placed in the stocks, the sergeants would so adjust them that the victim was nearly lifted from the ground, hanging half-suspended, with only the balls of his feet grazing the earth. The murder by their guards of convicts attempting to escape was a common thing everywhere. In the Georgia penitentiary were men sentenced for twenty years for the crime of simple larceny. The convict stockades in the open were unsanitary, vermin-laden, filthy, the occupants reeking with venereal diseases and tuberculosis, and so intimidated that they could not be brought to talk of their experiences. In case they attempted to escape they were pursued and recaptured with the aid of the inevitable bloodhounds.

Governor Anderson of Kentucky followed Mr. Cable with a bitter denunciation of the system, characterizing it as one productive of flagrant murder. And Dr. H. Z. Gill, Physician to the Southern Illinois Penitentiary, after an exhaustive study of sanitary statistics for the whole of the United States, concluded:

"But where shall we find explanation or justification for the fearful mortality beginning with Virginia and closing with Florida (with the remarkable and honorable exception of Georgia), save in the existence of a system worthy only of the dark ages, a disgrace to humanity and to the several states of this proud nation, where such a condition of inhumanity is permitted to continue from year to year? It is only another example of what men will do to their fellow-men when permitted by political rings, party factions, and popular indifference. Neither individuals nor corporations may be intrusted with the health or lives of convicts for a number of years without the constant inspection by independent Boards, clothed with ample authority to amend all contracts for violations, and to dismiss all officers and employees for sufficient cause. The Contract System of convict labor requires very careful guarding; but the Lessee System should not be tolerated in a civilized land."<sup>58</sup>

The indictment made by these men has stood. Yet, after forty years, traces of the system still linger in the South. The steady cannonade of publicity has not even yet totally obliterated it. The reasons for this are three in number:

1. The penury and economy of state officials, who have seen the system as a revenue-producer, while it has obviated the construction of state prisons.

<sup>57</sup>Ibid., p. 289.

<sup>58</sup>Gill, "State Prisons of the United States," *Proceedings of National Conference of Charities and Corrections* (1883), p. 264.

2. The cold-blooded indifference of the public.

3. The influence of the business interests that have profited by it and have used all their political influence for its retention. Among these latter have been big lumber and turpentine companies, coal mining companies, railway companies, road, levee, and railway building contractors, and even the Standard Oil Company. Also there must be mentioned the lessee middlemen and distributors. In Florida, a lessee wholesaler contracted for the entire output of state convicts and subleased them to several middlemen, who in turn subleased them to the final employers. This was, for many years, a regularized graft in that state. There are rumors of handsome profits made by the beneficiaries of this "trust," who were put to practically no expense.<sup>59</sup>

The extraordinary difficulties faced in trying to head off the system are well illustrated by the example of Georgia. We have seen how that state granted in 1876 a twenty-year lease, to start April 1, 1879. The public conscience was aslumber. In 1896 the Populist Party denounced the system. The Democratic Party was spurred by this example to promise its abolition. But these promises were set aside. The state officers put forward the plea that abolition was impracticable and, in 1897 they granted a fresh five-year lease. The law sanctioning the lease increased the hours of labor and authorized subletting. The price of convicts thereupon rose and the State (with the contractors) profited more than before. Meanwhile the dark rumors of scandal from the prison stockades increased. The horrors and the profits of the system rose in unison. The politicians again promised reform in 1903. But again after much show of serious effort, they judged it impracticable and granted another five-year lease. The average offered the state per convict was \$220, but some of the sublettings brought as much as \$630 per annum. In this stage the system was renamed. It was called the Contract System. The convicts were to be worked under direction of state officials and wardens. But in practice many of these men received from the lessees salaries much larger than those paid by the state.<sup>60</sup>

In 1906, the heavy hand of the Federal Government began to descend upon the leasing system. Even before this, Congress had passed a law directed against the practice of forcing men into peonage (as it was called) for debt. This was a practice widely prevalent in the

<sup>59</sup>Barry, "Slavery in the South Today," *Cosmopolitan Magazine* (March, 1907), Vol. 42, pp. 484, 485.

<sup>60</sup>For a terrible popular indictment of the system in Georgia in the last stages see Russell, C. E., "A Burglar in the Making," *Everybody's Magazine* (June, 1908), Vol. 28, pp. 753-760.

South in the local courts, especially in regard to negroes. The matter was brought before the Supreme Court of the United States, to decide the constitutionality of the Federal law. The law was upheld. President Roosevelt then interested himself in the affair. Federal district attorneys and courts and the Department of Justice began to investigate. It was found that the counties leased their misdemeanor convicts independently of state authority and that some of the abuses in them were more flagrant than those which occurred in connection with the leasing of felons. There were well-developed, regular methods of supplying laborers to companies lumbering in the palmetto forests or running turpentine camps. A county sheriff would arrest a large batch of able-bodied negroes for slight offences, such as drunkenness or gambling. They would then be either sentenced at once to the chain-gang and leased out, or they would be bound over for trial by the county court, whose sitting might be six months ahead. The bond would be placed at a high figure and would be paid for the accused men by the prospective employer. The men would be compelled to work for him to pay the amount of the bond. If they refused, there was the alternative of summary sentence and the chain-gang. The luckless individuals who were caught in the toils of such a procedure were said to be "turpented." Often single agricultural laborers were furnished to white farmers by an analogous process.

We shall trace in a later chapter the full outcome of these Federal activities. We need only note here that with the additional spur they furnished, along with a fully aroused public opinion and the intransigent attitude of Governor Hoke Smith, the legislature of Georgia in 1908, after a fierce struggle, voted for the abolition of the leasing system. Other Southern States also abolished or revised the system. But its beneficiaries did not relinquish it until it was literally torn from their hands. The effort to disengage this octopus from its grip on the living body of Southern Society did not even then prevent its leaving many a lingering tentacle.

In Florida, the barbarities of the system have been in some respects even worse than those in any other state. She leased out women, both black and white, also the aged, imbeciles, and juveniles. The net profits of the State from the system approximated \$240,000 a year. At each convict camp there was one dismounted guard for every five prisoners while on duty and one mounted guard for every twenty-five prisoners. Despite their shackles, the prisoners evidently seized every chance to escape. Often in doing so, they were shot down by the guards. Furthermore, there were two trained bloodhounds for each

twenty-five prisoners. Flogging was carried on incessantly with heavy rawhide whips. And the camp physician, receiving a salary from the lessee, failed to report to the state prison commission the unsanitary conditions of the camps.<sup>61</sup>

In such employments there was little opposition from free laborers. The latter avoided the palmetto camps as wounds and scratches from the palmetto are poisonous and fester easily. The leased convicts, however worked among these timbers often without shoes, and with insufficient clothing.

The main opposition to this system from free laborers came in Alabama and Tennessee where convicts were worked in the mines. This opposition had much to do with forcing efforts to reform the system in those states.

This survey of the leasing system is very inadequate. An entire volume could probably be written on the subject. Enough has been said, however, to show how it offends against every object (with one or two exceptions) that ought to be held in view in the employment of convicts. It is but a revival or relic of Slavery and has fully merited the condemnation which it has long since received.

## CHAPTER V

### THE PROTEST OF ORGANIZED LABOR AND OF BUSINESS ASSOCIATIONS

The less constructive of the forces making for reform but perhaps the more powerful, has been the protest of organized free labor and of the employers of free labor. Only certain outstanding manifestations can be considered, although it must be remembered that this protest has been dogged and persistent.

With the development of powerful national unions in the sixties and seventies, the protest of free labor became once more organized and articulate. It was especially bitter, furthermore. The workers have always strongly resented the idea that the state, to which they swear political allegiance, should place obstacles in the way of their prosperity. A convention of the hatmakers in 1878 summed up the issues in representative fashion:

"The convention expressed its unalterable opposition to the system of hiring out to favored contractors the labor of criminals; and adopted a resolution that it protest against turning the prisons into private workshops; that the government has no right to tax a business when that government is at the same time lending its authority to destroy the business;

<sup>61</sup>McKelway, op. cit., pp. 73-76.



that the chief purpose of imprisonment should be the reformation of the criminal; that his earnings should be secondary instead of first; that the prison management should be removed from party politics; and that the convention urge in all states:

1. The abolition of the contract system.
2. The removal of machinery from prisons and employment of prisoners at hard labor only.
3. Employment of prisoners at public works carried on by the state and for the manufacture of articles needed in prisons.
4. The instruction of prisoners in common educational branches.
5. That no merchant who deals in any manner whatever in prison-made articles be patronized directly or indirectly.
6. That mechanics refuse to work for or with 'any man who has been so base as to go to a state prison and instruct convicts in any branch of skilled labor.'"<sup>62</sup>

It can be readily seen that parts of this program could never be approved by progressive penologists. Labor's protest was then largely self-regarding and was not sufficiently mindful of the needs of prison reform. A volume on labor published in 1886 even remarked: "It would be better for this country to have the convicts in utter idleness, than to force them into a pernicious activity which destroys the free workingman."<sup>63</sup>

In the same year, 1886, the Knights of Labor, in assembly at Richmond, made a strong pronouncement against the competition of convict labor. They demanded that the states enact laws for the branding of prison goods, that the hours of labor for convicts be shortened to six, that their surplus earnings be paid to their families or heirs, and that no convicts be employed on government works.<sup>64</sup>

The union workmen at first favored the public account system, believing that it would obviate the evils of the contract system. Several states adopted the former system. But it was soon seen that neither this system nor the piece-price system, which a few states adopted, did away with competition. Indeed, there seemed no satisfactory remedy in sight.

The opposition of free workmen who were injured by convict competition, especially in such industries as wagon-making, and the manufacture of shoes, agricultural implements, stoves, and furniture, was sure to be backed by the opposition of their employers who were injured no less. Therefore, also in 1886, a large group of manufac-

<sup>62</sup>Hiller, "Development of the Systems of Control of Convict Labor in the U. S.," *Journal of Criminal Law and Criminology* (July, 1914), Vol. 5, p. 256.

<sup>63</sup>Simonds and McEnnis, *The Story of Manual Labor*, pp. 493-94.

<sup>64</sup>Second Annual Report of the Commissioner of Labor (1886), p. 365.

turers and others met in Chicago and organized the National Anti-Convict-Contract Association. Its object was to be "the thorough investigation of the subject of convict labor, for the purpose of discovering and securing the adoption of that method of employing the prison population in the various states which shall be the least burdensome to all labor and least oppressive to manufacturing interests—all proper conditions considered."<sup>65</sup> The organization also demanded that Congress enact a law to prohibit sale of prison-made products outside the state in which manufactured, the withdrawal of Federal prisoners from state prisons, the prohibition of purchase by the Federal government of any products of prison labor. They appointed a committee to formulate a plan of employment which would obviate the evils of the contract and lease systems, and advised their executive committee to appear before the legislatures of the various states and carry forward the attack against current systems.

The significance of the desire to bar prison-made goods from sale outside the state in which manufactured is clear. For should labor and the employers succeed in securing the abolition of competition within a certain state, what would be gained provided a flood of the same kinds of goods could flow readily in from nearby states whose legislatures had proved recalcitrant and refused to accede? The efforts of the Association brought to a focus the united opposition of the prison wardens and contractors of the country. They succeeded in effectually blocking any action by Congress on the above proposals.

Nevertheless, the year 1886 remains a red-letter year in the annals of prison labor reform. For Congress did, on August 2 of that year, direct the new Commissioner of Labor, Carroll D. Wright, to prepare an exhaustive study of convict labor. This was done and the result was published the following year (1887) as the Second Annual Report of the Commissioner of Labor.

This report summed up the facts regarding prisoner employment in every state. It made a study of the various systems in use; estimated the amount of injury to free labor from convict competition; summed up the various state investigations; summed up also the suggested plans of reform and the convict laws of all the states. We are here concerned with its results regarding the economic effect of convict competition.

It concluded that the competition from convict employment was not, in the aggregate, a question worthy of serious consideration. Summing up all the figures, it showed that the product of prisons

---

<sup>65</sup>Ibid., p. 366.

composed but .54 per cent of the total mechanical products of the country. The population of prisons where work was carried on constituted but 1 in 1,000 of the population of the country and the convicts engaged in productive industries averaged but 1 to every 300 of the free workmen in the same trades.<sup>66</sup>

However, the conclusion was reached that locally and in specific industries the competition might be serious to the point of disaster. This opinion had already been reached by the abler labor leaders, manufacturers, and penologists. To substantiate it, the report used the results of a study made by Col. John S. Lord, Secretary of the Illinois Bureau of Labor Statistics.<sup>67</sup>

The study dealt with the production of provision cooperage for the Chicago market. Private contractors at the Joliet, Ill., penitentiary and at the northern penitentiary of Indiana at Michigan City were producing this cooperage. The statistics of their production for eleven years, 1875-1885, were studied and compared with those of free cooper shops for the same market. The prison contractors during this time furnished 67.8 per cent of the total product placed on the market while their output rose 360 per cent in volume. The volume of output of the free shops rose only 31 per cent. The enormous growth of the meat-packing industry, requiring pork barrels, lard tierces, etc., caused a rapid increase in the market for these articles. The increase was chiefly absorbed by the prison output.

Furthermore, the prices of provision cooperage declined during the period, and the wages in the free shops declined with them. Wages fell 30 per cent during the ten years, from an average earning per year per workman of \$613 to only \$432. It is true that prices and wages were declining generally through the period, but in other free industries unhampered by prison competition, the decline was much less. Thus the coopers who were making beer barrels suffered a decline of only 5 to 9 per cent.

It is also instructive to note that the wage decreases of free provision coopers—30 per cent—was almost paralleled by the price decline of provision cooperage on the Chicago market—33.7 per cent.

The free provision coopers in Chicago received a piece-price of but 25 cents on each pork barrel. But in other cities, where there was no convict competition, the piece-price was higher. In Milwaukee the price was 30 cents per barrel, in Indianapolis 33.3 cents per barrel, in

<sup>66</sup>Ibid., p. 371.

<sup>67</sup>Ibid., pp. 373-378. The study is reported in full. It is also given in the Twentieth Annual Report of the Commissioner of Labor (1905), pp. 155-161.

Buffalo and Baltimore 40 cents. The price rose in proportion to the distance from the centers of convict competition.

The contractors were free of all overhead—no rent, no building insurance, no tax on real estate. They paid for their workingmen only 45 cents to 62½ cents per day. The free coopers and their employers as well were bitter and resentful that such special profits could be made virtually at their expense by contractors enjoying the special patronage of the state.

This study may be regarded as typical. Several similar ones have been made. But they all tend to the same conclusion, namely, that it is only in special trades that the effect of convict competition is really seriously felt by free workers. We may fairly regard this conclusion as reliable.<sup>68</sup> It substantiates in part the criticisms of free workmen. Their attitude may certainly be regarded as justified. But one is inclined to doubt whether they have not of late years bestowed on convict competition more attention than it has really merited.

On the whole, the labor unions have themselves undergone a process of education on the subject of convict labor and its relations to themselves. Formerly there was a considerable element of moral prejudice in their attitude. Many felt that the "hard-working and honest mechanic is insulted by having felons put on an equal footing with him. The ranks of his trade are not filled with reputable and worthy men like himself, but with the outpourings of the penitentiaries, including thieves, robbers, murderers, and villains of the lowest type. . . ."<sup>69</sup> Free workmen were bitterly opposed on this ground to the teaching of skilled trades in the prisons. But in more recent years this obstructive ground has been vacated. There has been a tendency to concentrate on the economic side of the question. This tendency seems clearly visible since 1900.

Moreover, the unions have, in their efforts to reform in their own interests the convict labor policies of states, encountered stiff opposition from penologists. The latter have largely converted the unions to the broader, social point of view. Thus the unions now champion the reformatory motive of convict employment. They wage war on the contract system not only on the ground of its economic detriment to themselves, but also on the ground that it exploits the *prisoner*, and prevents or hinders *his* best interests. Thus in 1913 a trade-union representative wrote:

"Prison labor under the contract convict labor system has unquestionably been the means of lowering the wage rate for thousands of wage-

<sup>68</sup>Compare the findings of the Belgian government, pp. 24, 25 above.

<sup>69</sup>Proceedings of National Prison Association (1886), p. 248.

earnings and in some instances its competition has practically driven an industry from the field. It is because of this competition and for humanitarian reasons that trade unions have been opposed to its existence. They are strongly opposed to contract convict labor because they believe that it has been brought into existence and extended wherever possible, largely for the personal profit of private parties and because it tends to relieve prison wardens and boards of penitentiary managers from personal responsibilities and administrative duties which would otherwise rest upon them, and, in addition, because of their conviction that under this system the prisoners' welfare and reformation are made secondary to the making of profits for the contractors."<sup>70</sup>

There is little in such an attitude that cannot commend itself to the reforming spirit. After all, most prisoners belong to the working masses and much crime results from those very conditions of economic stringency against which the unions endeavor to make head. The same writer further says:

"Briefly reviewed, the trade-union attitude toward prison labor is that its first object should be the prisoner's reformation; that under no circumstances should any element of private profit enter into consideration; that the labor performed by prisoners should be of a useful nature and that for his labor the convict should be paid, for the benefit of those dependent upon him and for his own assistance upon regaining freedom; and, finally, that the principal object of the state should be to protect itself from the vicious and unfortunate, to give them an adequate opportunity for reformation, but not to derive profit from their labor."<sup>71</sup>

John Mitchell, President of the United Mine Workers of America, writing in 1912, was able to comment on the fact that "When three years ago the National Committee on Prison Labor entered upon its work it was found that its members were in practical agreement on the question with the trade-unionists. . . ."<sup>72</sup>

It certainly cannot be denied that the opposition of the trade-unions to the contract and lease systems has contributed powerfully to their disappearance, while the state-use system, championed by many labor leaders, has gained many adherents among prison reformers.

Before 1886 the efforts of free labor were disunited, being scattered among the various craft organizations. Even then they were frequently effective. For example, the hatters, whose manifesto of 1878 we note above, succeeded that same year in securing the abolition of hat-making in the New Jersey state prison at Trenton. In 1883

<sup>70</sup>Frey, J. P. (Editor of *International Moulders' Journal*), "The Trade-Union Attitude Toward Prison Labor," *Annals of the American Academy of Political and Social Science* (March, 1913), Vol. 46, p. 132.

<sup>71</sup>*Ibid.*, p. 137.

<sup>72</sup>Mitchell, "The Wage-Earner and the Prison Worker," *Annals of the American Academy of Political and Social Science*, Vol. 46, p. 9.

New York also abolished in her prisons the making of fur or wool hats. In the same year several states required by statute the labeling of prison-made goods in intra-state traffic.<sup>73</sup> And during these same years several states were engaged in abolishing the contract system.

Since 1886, the year of the final organization of the American Federation of Labor, that body has unified and directed the campaign of free labor against convict competition throughout the nation. It has done this largely through councils and committees which co-operate with the state federations of labor. It has employed its peculiar but effective political methods to influence legislators and state officials to accede to its desires. It aided in the formation of the National Committee on Prisons and Prison Labor and is permanently represented on the board of trustees of that body. The state federations frequently secure representation on state committees of investigation of prisons. The "American Federationist" and other labor publications maintain an incessant cross-fire of comment and agitation on all subjects connected with convict labor and convict competition. The Federation is committed to a perennial effort to induce the federal legislature to pass a law barring from shipment in the channels of interstate commerce all convict goods manufactured and destined for the competitive market. There is also a continuous effort to secure the enactment of uniform state laws in the direction of the state-use system.<sup>74</sup> To sum up, the campaign has been persistent, relentless, and, on the whole, remarkably effective.

We shall conclude this chapter with the following quotation from an authoritative student of the subject involved:

"The adoption of these recent methods of employing convicts is the outcome of a century of endeavor of citizen mechanics to secure freedom from the menacing competition of prison labor. This competition was brought on (1) by the development of our penitentiary system whereby compulsory labor was made a means of punishment and reformation, thus creating a large potential supply of prison labor and whereby convicts sentenced to such labor were concentrated in relatively few occupations within narrow markets, and (2) by the development of the factory method of production, which resulted in the division of classes and functions, shifted the burden of competition to the laborer and made low-plane producers a menace to the standard of living of the higher-plane workman. Convict labor is such a menace in competition and is objectionable on moral and economic grounds. To remedy these evils labor unions have striven for various restrictive and regulative measures and have turned

<sup>73</sup>Hiller, "Labor Unionism and Convict Labor," *Journal of Criminal Law and Criminology* (March, 1915), Vol. 5, p. 877.

<sup>74</sup>Proceedings of Annual Convention of the American Federation of Labor (1921), pp. 132, 133.

to political activities to obtain their demands. By this political program legislation has been effected abolishing the systems of private control and adopting public control and, in an increasing measure, public use of convict labor. By this triumph of social control, the prisoner is protected against exploitation and the citizen mechanic against unequal and unfair competition."<sup>75</sup>

## CHAPTER VI

### CONVICT LABOR PROGRESS TO 1900

Says Frederick Howard Wines concerning the state of the American prisons in 1870:

"The discipline in most of them was either severe to the verge of cruelty, or lax to the point of weakness, according to the ideas and sentiments of the wardens in charge. The wardens were appointed almost wholly for political reasons, and were subject to change with every alteration in the political complexion of the state governments. Comparatively few of them were really competent for their position and they did not, as a rule, remain in office long enough to become thoroughly acquainted with their duties and qualified to perform them. The majority of them openly professed a disbelief in the possibility of convict reformation. The prisons were great manufacturing establishments, operated by prison contractors for personal profit. The state took little interest in the fate of the sentenced, except to insist that they must be made to pay, as nearly as possible, for their own support by their own labor. The best warden, in the popular estimation, was the man who could show the best balance sheet at the end of the year; and the financial test was the principal test of the excellence of prison management."<sup>76</sup>

This sordid, utterly commercialized view of convict labor was assailed by a group of men who may be called the fathers of the newer penology in the United States. Dr. E. C. Wines, father of F. H. Wines, was one of these. In 1868 he was investigating the prisons of New York. In 1869, in conjunction with Dwight and Brockway, and with the backing of the New York Prison Association, he urged upon the New York Legislature the construction of a new state prison or reformatory to be based on the system of grading, marks, tickets-of-leave, reduced sentences, etc., developed in Australia by Maconochie and in Ireland by Crofton, also by Montesines in Spain after 1835 and by Obermaier at Munich after 1842. The legislature granted authority. The new institution was created and became the Elmira Reformatory.

The reformation of the prisoner was to be attained through labor,

---

<sup>75</sup>Hiller, *op. cit.*, p. 879.

<sup>76</sup>Wines, F. H., *Punishment and Reformation*, p. 199.

education, and religion. But of this triad, labor was the most important. Once again the reformatory aspect of labor comes to the front. We need not go on to describe the work of the reformatory. Brockway, as its administrator, proved to be one of the most constructive of all penologists. There can be no doubt that the example of this celebrated institution, with labor as the leading principle of reformation, has since exerted a large and continuous influence.

In 1870, at Cincinnati, the National Prison Association was formed, with E. C. Wines as secretary. It set forth a remarkable Declaration of Principles and made the following pronouncement regarding convict labor:

"While industrial labor in prisons is of the highest utility and importance to the convict, and by no means injurious to the laborer outside, we regard the Contract System of prison labor, as now commonly practiced in our country, as prejudicial alike to discipline, finance, and the reformation of the prisoner, and sometimes injurious to the interest of the free laborer."<sup>77</sup>

This judgment marked the beginning of an assault by the progressive penologists on the contract system, which, joined to the efforts of free labor, was destined to gradually throttle that method of employment. In 1874 the contract system prevailed at twenty state prisons, the lease system at six, and a mixed system at seven. In this year the National Conference of Charities and Corrections was organized. It also began to study and discuss convict labor from a constructive standpoint.

Beyond some tentative experimentation with the public account system, very little was achieved, however, until 1882. In that year California abolished the contract. There came a small cloudburst of state investigations, and, in the same year, Pennsylvania abolished it in part. During the next four years the same action occurred in six more states, all of them, except one, large industrial states, where the protests of free laborers and their employers were exceptionally insistent.<sup>78</sup> We have seen how free labor and the employers took organized action through the Knights of Labor and the Anti-Convict-Contract Association. The alternative methods of employment resorted to by the states were the public account and piece-price systems. But these turned out to be also unsatisfactory and the resulting confusion gave rise to an interesting crop of reform proposals, the chief of

<sup>77</sup>Byers, J. P., "Prison Labor," *Correction and Prevention* (Russell Sage Foundation), Vol. 2, p. 200.

<sup>78</sup>Hiller, "Development of the Systems of Control of Convict Labor in the U. S.," *Journal of Crim. Law and Criminology*, Vol. 5, p. 259.



which are summed up in the Annual Report of the Commissioner of Labor for the year 1886. They were:

1. Entire abolition of convict labor.
2. Establishment of a penal colony by the Federal government.
3. Employment of prisoners upon public works and ways.
4. Employment in manufacturing goods for the government (the principle subsequently embodied in the state-use system).
5. Exportation of the products of convict labor.
6. Prohibition of the sale of convict-made goods outside of the state where manufactured.
7. Convict-made goods to be stamped "prison-made."
8. Payment of wages to convicts.
9. Reduction of the hours of labor in prisons—to bring down the output and lessen the competition with free labor.
10. Diversified industries.
11. Substitution of industries not now carried on in this country.
12. Utilization of convicts upon farms.
13. Hand-labor under the public account system.<sup>79</sup>

It can be seen that several of these proposals were aimed at modifying the contract system rather than abolishing it altogether. But organized labor continued to press for a system which would utterly abolish competition. Their occasional resort to the argument that all convict labor should be abolished aroused the ire of the prison reformers. Said F. H. Wines, "the man who favors so violent a measure is an unconscious enemy of mankind."<sup>80</sup> The issue turned out to be simply this—that there must be employment of convicts, but that there must be no competition with free labor. This Hegelian dilemma found a solution in the state-use system, the distinguishing feature of which is the preferred market created for the products. It has largely appeased both free labor and the reformers. We shall trace the evolution of this system.

It had its beginnings in 1862 in the District of Columbia. In response to appeals from the journeymen and master cordwainers, Congress directed that the warden of the District Prison produce shoes exclusively for the army and navy, to be paid for by the latter at the customary rates.<sup>81</sup> In 1886 Ohio adopted the state-use system in part. Nevada and Massachusetts followed in 1887. In most of these cases

<sup>79</sup>Second Annual Report of the Commissioner of Labor (1886), pp. 382-390.

<sup>80</sup>Wines, *op. cit.*, p. 211.

<sup>81</sup>Hiller, *op. cit.*, p. 262.

the manufacture of boots and shoes was involved. New York, in revising its constitution in 1894, yielded to pressure from the iron molders of that state and adopted what was, up to that time, the most drastic of all reforms. The new constitution forbade the contract and competition, and contained clauses favoring the state-use system. Elaborated later by statutes, this system has remained the universal one in that state, even comprehending the county jails. The example proved decisive. By 1899 thirty-five states had the state-use system in whole or in part.<sup>82</sup>

We have already criticized this system pretty fully. But it may be well to note here its administrative features as seen in New York. All industry is under control of a commission of three men appointed by the governor with senatorial concurrence.

"The commission has the authority to require the officials of the state and its political divisions and institutions to furnish to the commission annually, for each ensuing year, estimates of the amount of labor and manufactured articles required by the respective political divisions and public institutions. Employment, which shall not exceed eight hours a day, shall be for the purpose of supplying state and other public institutions with needed articles, . . . 'The labor of the convicts in the state prisons and reformatories, after that necessary for the manufacture of all needed supplies for such institutions, shall be devoted primarily to the state and the public buildings and institutions thereof, and secondly to the political divisions of the state,' and their public institutions. The superintendent of the state prison distributes among the penal institutions under his jurisdiction the labor and industries assigned by the prison commission to these institutions. Due regard is to be had for the most advantageous distribution of the labor, and the prisoner is to be employed, so far as practicable, in occupations in which he will be most likely to obtain employment after his discharge from imprisonment. No articles manufactured in the prison shall be purchased by the state or its public institutions from any other source unless the state commission of prisons shall certify that the same cannot be furnished upon requisition; and no claim for the payment of goods purchased elsewhere shall be audited or paid without a certificate."<sup>83</sup>

The commission thus serves as a bureau of clearance. It sets the scale of prices for all products handled, following as closely as possible current market prices. Altogether its powers are such as to be effective. To keep it efficient and free from political domination, publicity is probably the most adequate weapon.

After 1886 there was a rapid development of the agitation for branding convict goods and several states passed laws to that end.<sup>84</sup>

<sup>82</sup>Report of the Industrial Commission on Prison Labor (1900), p. 79.

<sup>83</sup>Hiller, *op. cit.*, p. 263.

<sup>84</sup>All of these laws were declared unconstitutional.

After 1895 the leasing system began to be restricted to an ever-increasing degree by the Southern States. There was increasing resort to the employment of convicts upon public works.

Finally, we may note the continuance of strong public interest in the question. The Federal Commissioner of Labor made a second investigation in 1895, the results of which were published in July, 1896, as Bulletin No. 5 of the Department of Labor. The changes in systems of employment since 1885 are reflected in the following table.<sup>85</sup>

SUMMARY OF VALUE OF GOODS PRODUCED OR WORK DONE BY SYSTEMS OF WORK, 1885 AND 1895

(Value in dollars)

Systems of Work	Value	
	1885	1895
Public account system.....	2,063,892.18	4,888,563.36
Contract system .....	17,071,265.69	8,190,799.70
Piece-price system .....	1,484,230.52	3,795,483.24
Lease system .....	3,651,690.00	2,167,626.03
Totals .....	24,271,078.39	19,042,472.33

The percentage of increase for the public account system was about 130 per cent and for the piece-price system, 150 per cent. However, the contract system showed a decrease of about one-half, and the lease system of 40 per cent. There was a notable decrease in the total value of goods produced. This was due partly to the fact that selling values were lower in 1895 than in 1885. And it was partly due to the increased percentage of idle and sick among the convicts. In 1885 this percentage was 6.3, in 1895, 13. The increased percentage of the idle showed clearly that success in abolishing old, objectionable systems of employment had somewhat outstripped success in discovering new, alternative methods. Arkansas, Mississippi, New Mexico, North Carolina and Washington had abolished leasing. Illinois, Massachusetts, New York, Pennsylvania and South Dakota had abolished the contract. A large quantity of work done under the new state-use system was included in this report under public account.

An additional investigation was made four years later by the United States Industrial Commission. It is published as Volume III of the Commission's Reports. This report fully distinguished the state-use system and discussed it at length. It found it already adopted in

<sup>85</sup>Bulletins of the Department of Labor, Vol. 1, p. 446.

whole or in part by the great majority of the states. Tennessee had replaced the lease by the contract. Mississippi was completing the transition from the lease to state farms and public account. Maine, Colorado, and other northern states permitted counties to lease short-term convicts. What this really meant was that they were hired out to enable their hire to be applied to the defrayment of fines. A similar procedure was quite general in the southern states. However, aside from this, county jails were very deficient everywhere in keeping their inmates regularly employed. Arizona and Wyoming, doubtless under pressure of financial stringency, had espoused the lease system for state convicts.

The Commission favored legislation by Congress which would enable the states to assume complete control, within their respective borders, of all convict-made goods.

## CHAPTER VII

### CONVICT LABOR PROGRESS SINCE 1900

The public works system has extended rapidly, coming to include reclamation, improving, and drainage of public lands, erection of public buildings, construction of roads and railroads. Furthermore, in working convicts in mines and quarries and on state farms, states have produced goods for their own use and for sale on public account. All this involves a full assumption of state control. Private control has continued to disappear. Outdoor employment is considered beneficial to health. Unskilled labor is more readily utilized than in manufacturing. But the chances of escape are increased.

Mississippi had been the pioneer state in the south in abolishing the lease (for the state). This was done by constitutional amendment in 1890.<sup>86</sup> She began to segregate her convicts on large state farms. The negroes, who formed the bulk of the prisoners, were, of course, especially fitted for farm work. The state farms obviated competition with free labor, also aroused no notice from farmers. The production was too small. North and South Carolina, Louisiana and Texas have followed the example of Mississippi and have established state farms. Even then inhumanities are possible. Convicts have been brutally beaten to death by farm overseers.

A very serious matter in the South has been the autonomy of the counties in the management of convicts. In many states the

<sup>86</sup>McKelway, "Three Prison Systems of the Southern States of America," *Correction and Prevention* (Russell Sage Foundation), Vol. 2, p. 85.

counties have been specifically committed to the lease system. Often a state has abolished or restricted this system in its own institutions without checking it in the counties. In these latter, rather the worst abuses seem to have occurred. Mississippi did not take control of her counties and attempt to modify the lease in them until 1908, eighteen years after driving it from the state institutions.

1907 and 1908 were banner years in the annals of convict labor in the South. They marked the culmination of those Federal activities to which we have already referred. Many prosecutions were made of public officials and lessee contractors on the ground of denial to accused prisoners of jury trial and other rights. Five men of a leading lumber company were convicted by Federal court and themselves sentenced to the penitentiary for seven years. President Taft later refused to pardon these men, saying that he could not see that it was a proper occasion for the extension of clemency. There were further prosecutions of "hard-boiled" sheriffs, judges and contractors. A debt peonage law of Alabama was declared unconstitutional by the United States Supreme Court. The complacent beneficiaries of the reigning system were compelled to flinch for once in their lives. Politicians were overawed. For a little while the reform of the leasing system went on in dead earnest in the South; until the wave of popular wrath and indignation, so characteristic of democratic crowd minds, began to subside and the whole question moved out of the focus of popular attention as rapidly as it had entered.

Nevertheless, there was some permanent progress. Georgia and Alabama abolished or modified the system. The commissioner of agriculture in Florida, on behalf of the state prison board, recommended to the legislature in 1907-08 a number of provisions for safeguarding the lease system. They were:

1. Complete segregation of colored and white prisoners.
2. Positive restriction of hours of employment per day to 10, provision to be embodied in the contract.
3. Permissible overtime work, with payment to prisoner by contractor of full wage therefor.
4. Definite requirements regarding sleeping quarters, clothing, bedding, etc., in camps.
5. Strict prohibition of resale, for profit, by individuals or corporations, of contracts entered into by the state board with them.<sup>87</sup>

---

<sup>87</sup>McKelway, *op. cit.*, pp. 73, 74.

The above recommendations for reform themselves furnish a key to the iniquities of the system. The last of them has reference to the practice of subleasing. Florida seems to have adopted some of these provisions. But the system continued and, in 1910, the state secured \$346,000 net profits from it. Nothing was done with the counties and, during the past winter, it became fairly clear from the publicity surrounding the death in a lumber camp of Martin Tabert, a North Dakota white boy, that in the counties, the system survives with many of its pristine barbarities. Sheriffs receive so much per head for each convict laborer delivered to the lessees. The men are worked waist-deep in swamps and are beaten with rawhide whips. There is much of mystery and secrecy about the whole matter. The North Dakota legislature has delivered a protest to that of Florida. The boss who whipped Tabert to his death has been convicted and punished. Rumors in the magazines and newspapers are to the effect that the whole system has been finally altogether abolished.<sup>88</sup> But in view of the real meaning of some of the "abolitions" that have occurred in times past, it seems best to wait a little while before accepting these rumors at too high a valuation. There is the almost hopelessly baffling complication rising out of the fact that nearly all of these convicts who are leased are negroes. Many of them are confirmed criminal negroes. It is indeed difficult to arouse on their behalf, a vigilant, sustained, indigenous public sentiment within the Florida counties themselves which would be necessary for permanent enforceable reform measures. Indeed, had it not been for the fact that the system overreached itself and did to death an alien white youth, it cannot be told how long the matter would have gone unheeded by an ignorant, indifferent, and slumbrous public.

Alabama "abolished" leasing and adopted the contract system. But the transaction deserves scrutiny. Under the new plan, the contractors were to employ many men outside the state prisons. They were to be under the strict control of wardens and guards, who must be licensed by the state. But the salaries of the latter were to be paid by the contractors. The contractors were also to pay a fixed sum per day per convict to the state. The state was to furnish medical inspectors, but the contractors were to furnish food, clothing, shelter, medical attendance—all under regulations of a state board of inspectors.<sup>89</sup> The system turns out to be largely the same as before. The biggest change is in the name. Yet many public men right in Alabama thought that the bad old lease system was utterly wiped away.

<sup>88</sup>The Nation (July 18, 1923), Vol. 117, p. 48.

<sup>89</sup>McKelway, *op. cit.*, pp. 76, 77.

It is true that Alabama employs a part of her convicts otherwise, under public account and state-use. Her revenues continue handsome, nevertheless. Around 1910 she was averaging half a million dollars a year net profits. The contract system has turned out, as might have been expected, to be little different from the system which it superseded. There seems to be strong public sentiment in certain quarters against it, but it survives despite efforts to end it in 1915 and 1919. The convict-operated mines are especially serious offenders. The men who work in them show a very large percentage of injuries and of tuberculosis. The punishment of whipping was abolished in July, 1922, but is said to have been replaced by the use of wooden clubs and metal pipes. Regarding other aspects of the contract system, the "Nation" observes:

"But Alabamans are apparently little concerned with the creeping into the state of the insidious 'contract' system that quibbles at the law and perpetuates all the evils of the old 'lease' system. . . . A few weeks ago a private manufacturing company—sometimes called the 'convict labor trust' from its use of 1,600 prisoners in Kentucky, Wisconsin, Wyoming and Oklahoma, as well as in Alabama—began operating a new shirt factory in the Kilby Prison. They propose to pay the state seventy-five cents a dozen for shirts made and packed, which, according to the National Committee on Prisons and Prison Labor, is not more than half the cost in free factories, with \$150 per month for cartage and overhead charges, which will mean an actual loss to the state."<sup>90</sup>

Georgia finally ended the lease system in 1909. She also brought county management of convicts under state control. The convicts were put to work on the public roads.

North Carolina in 1907-1908 gave her counties full authority to employ county convicts (misdemeanants) in chain gangs building public highways. Forty counties took action. They put the men down to such a gruelling pace that the lives of the road convicts came to average less than five years. Misdemeanants received sentences longer than those of the felons who were committed to the state prisons. Superintendent Mann of the state prison considered such road work equal to the lease system. The lease had been abolished for state prisoners, as in Alabama, and replaced by contracts. The contractors worked the men outside the prisons. However, the state retained control of discipline and feeding. The keeping of the prisoners in the open is concededly a good thing. But there is unavoidable degradation for the spectators. The numerous negro convicts seem like heroes to other members of their own race.

<sup>90</sup>The Nation (July 11, 1923), Vol. 117, p. 31.

The extraordinary difficulties of the South in prison labor reform are thus exemplified. Much remains that is bad. But there has also been much progress since 1883. Meanwhile it is well to remember that the lease system, while more cruel than any other, has gained tenacity from race prejudice. Cruelties have also been practiced in the North, under the contract system, such as the strait-jacket, flogging, and the solitaires, to force men to work out their daily "stints" of labor.

On October 1, 1909, of the prisoners in the penal institutions of the United States, 67 per cent were industrially employed. Many states retained adverse, restrictive legislation on employment. Hence, the large number of the able-bodied who were idle or doing mere routine work. Of the 53,200 industrially employed, 3,000 were at work under the lease system, 15,700 under contract, 3,200 under piece-price, 10,000 under public account, 21,300 under state-use. The latter had absorbed two-fifths of the total number employed.<sup>91</sup>

In 1909 the National Committee on Prisons and Prison Labor was organized, with Dr. E. Stagg Whitin as secretary. This body made propaganda its main concern, leaving the actual technique of reform to legislatures. It brought the subject of prison labor into the deliberations of the Governors' Conference in 1911, and a symposium was prepared of current legislation, party pronouncements, etc., on prison labor. Progress and publicity were rather abundant during these years. Attorney-General Wickersham tried to persuade Congress to pass a federal jail commission bill. Americans were somewhat shocked when in 1912 in Washington the president of the International Prison Congress remarked concerning the American jails: "In these jails it is hardly too much to say that many of the features linger which called forth the wrath and indignation of the great Howard at the end of the eighteenth century."<sup>92</sup> In that same year the Progressive party inserted a plank in its national platform condemning the contract system. It declared for "the abolition of the convict labor system, substituting a system of prison production for governmental consumption only, and the application of prisoners' earnings to the support of their dependent families."<sup>93</sup> The Democratic party likewise spoke out on the subject.

<sup>91</sup>Byers, J. P., "Prison Labor," *Correction and Prevention* (Russell Sage Foundation), Vol. 2, p. 198.

<sup>92</sup>Quoted by Mitchell, John, "The Wage-Earner and the Prison Worker," *Annals of the American Academy of Political and Social Science*, Vol. 46, p. 9.

<sup>93</sup>Roosevelt, "The New Penology," *Annals of American Academy*, Vol. 46, p. 4.



The war on the contract and the lease continued. Yet in 1913 the lease was permissible (though not necessarily employed) in five states, and the contract in nearly half of all.<sup>94</sup> Many states were adopting different systems without revising their legislation sufficiently to make the old systems impossible. Several states again passed branding and licensing laws. Others provided convict labor commissions, with representation for labor unions. Others provided wage payments to prisoners and relief for their families. The state-use and public works systems continued to gain ground. Many states provided convict farms or conservation works for prisoners. Efforts to solve the jail problem began to be made through the adoption of the state farm for misdemeanants.

A very popular alternative for the old discredited methods of employment proved to be road work. It grew to be little less than a fad for some years. This is not to say that it does not possess advantages. It is not a new system at all. The ancient Romans made much of it. It had been resorted to from time to time in our own country by different states before 1900. But it has not until recent years attained such popularity as a penal measure.

One of the most prominent and successful examples of the foregoing method was in Colorado. This state first adopted it in 1908. Attempts were made to work the convicts in gangs under strict guard. Progress was too slow under this plan to suit the enterprising warden of the Colorado prison, Thomas J. Tynan. He therefore introduced an honor system, increasing the number of men in the road camps and withdrawing all guards. According to his own enthusiastic estimate, the results were gratifying. The appeal was made to the best qualities in the men. Each one pledged himself before going upon the roads to "play square" with the state and not to attempt to escape. The men were worked eight hours per day. A reduction in sentence of ten days was allowed for every month of work. During the years 1908-12, according to Tynan, 1,800 individual men were employed in the "honor" camps. They worked without guard at distances from the prisons of from 150 to 300 miles. They gained in self-respect, stamina of character, and the sense of reliability. The system also proved to be very economical. In two years, 1911-1912, 157 miles of road were built. The cost per mile was \$298.12, one-fifth of current prices as based on the estimates of contractors. The cost of the maintenance

---

<sup>94</sup>See Report of Sec'y of Labor to the Senate, May 22, 1914.

of the prisoners was 32 cents per day per man. Yet the latter were in fine physical condition.<sup>95</sup>

New Mexico had anticipated Colorado in introducing the "honor" system. She began road work in 1903. Oregon followed in 1904, Washington in 1907, Montana in 1910, Utah in 1911, California, Nevada, Arizona and Ohio in 1912. Kansas, Oklahoma, Minnesota, Missouri, Iowa, etc., soon swung into line. Nearly every western state put its felons on the roads. In such eastern states as New Jersey and Michigan efforts were made to adapt the system to the employment of county convicts. Thus the influence was very widespread. It is safe to say that altogether probably a large majority of all the states have, at one time or another, had experience with road work for convicts.

Inasmuch as this method of employment has enjoyed such a wide vogue, we shall, at the risk of allotting to it excessive space, reproduce the long series of advantages that are claimed for it. An exhaustive treatise sums them up as follows:

"Labor on public highways provides the best form of employment for prisoners, because:

1. It is healthy, out-of-door work.
2. It improves morals and helps reformation.
3. It is uniformly attractive to the men.
4. It enables the payment of a wage.

It is the best use from the standpoint of the state and society because:

1. It competes least with free labor.
2. It benefits all the people with a needed improvement at least cost.
3. By reformation of the lowest class, it elevates the whole social order.
4. It provides revenue to the state instead of causing expense.
5. It decreases the amount of crime.
6. Of all the present forms of convict employment, it gives the largest returns in money value.

Experience shows that:

1. The system can be successfully applied under varying conditions of climate, location, and class of prisoners.
2. As far as possible the honor system should be used and commutation of sentence allowed.
3. The choice of convicts for honor road work should be based upon temperamental fitness rather than upon nature of crime and length of term, but acceptance should be voluntary on the part of the prisoner and dependent on his satisfactory physical condition.

<sup>95</sup>Tynan, "Prison Labor on Public Roads," *Annals of the American Academy*, Vol. 46, pp. 58-60.

4. Of all the kinds of convict employment, that on the highways should be most attractive in wages and privileges.

5. A wage should be paid not to exceed the net earnings of the prisoner.

6. Accurate data should be kept to show all unit costs, together with the engineer's estimates of the amount and value of the work done.

7. The prisoners should be kept under the prison representatives acting as foremen, and construction work should be under the highway department acting as engineers.

8. Concrete bridge work, grading and drainage present a very useful form of work and should be generally employed."<sup>96</sup>

All of the above sounds almost too good to be true. It reminds one of the statements of a zealous advocate rather than those of a scientific observer. Yet we must recall that zealous advocates are frequently the only ones who can make sufficient impression on the public and public officials to get any response. Nothing can be more clear than that road work properly managed (not the kind described as carried on in North Carolina) is a contribution to the solution of the problem of convict labor. Likewise, nothing can be more clear than that, in itself, it does not afford a complete nor a final solution. Convicts cannot be worked upon roads except for certain months of the year. Shall we not be compelled to go on trying to find means of employing them at other times?

In the last few years the National Committee on Prisons and Prison Labor has been engaged in an effort to render the adoption of the state-use system universal among the states. In March, 1923, a conference of representatives from seventeen states met under its auspices in Washington. Here was propounded and emphasized a plan for "the allocation of particular industries to particular states, and the exchange of surplus prison-made commodities between the states for institutional and governmental use. A standing committee was formed to facilitate this exchange, and another to prepare standard specifications for the goods in question."<sup>97</sup> This may be regarded as the latest and most novel suggestion in prison labor reform. It is called the "states'-use" system. It would apply to prison industries the economic principle of geographical division of labor. It is expected that great economies in machinery, equipment, etc., might be possible under this system. It might render the state-use system far more profitable than at present and thus deal a finishing blow at the contract system. However, there

<sup>96</sup>Wilmot, "Use of Convict Labor for Highway Construction in the North," Report of Academy of Political Science (New York) on Good Roads and Convict Labor, pp. 63, 64.

<sup>97</sup>The Survey (April 15, 1923), Vol. 50, p. 67.

seems to be in it at least one pertinent weakness. What would become of the opportunity for trade-instruction offered by the present state-use system, with its varied employments and industries? The new system would have to show a sufficient surplus of profit to enable the provision of regular trade or vocational schools in the prisons to wipe out this disadvantage. Moreover, the state-use system has not itself been perfected as yet. Let us see how it is working in New York state, the most celebrated of its adherents.

When this state, nearly thirty years ago, made its sweeping adoption of the state-use system, it was widely supposed that it had permanently quelled the convict labor problem. As a matter of fact, it had merely exchanged one problem for another, although there seems to be little reasonable doubt that the change was greatly ameliorative. Says an experienced student of the penal system of New York state:

"Since that date" (1894) "there has been more idleness in state prisons and county penitentiaries than was known throughout the whole previous history of prison labor. At the present, probably not more than one-third or one-half of the State prison population is employed at a reasonable rate of intensity and a considerable proportion in at least three of the county penitentiaries is practically unemployed throughout the day."<sup>98</sup>

The above writer goes on to admit that under the contract and piece-price systems, the employment was most adequate and continuous. But these systems often imposed overwork, in addition to destroying the reformatory discipline of the prisons. Therefore, we cannot advocate their re-instatement. It is preferable to inquire why the state-use system has not proved more satisfactory. This is explained as follows:

"Prison labor may be utilized for the production of any commodities at reasonable cost and with a fair margin both for profit and for the payment of wages to prisoners if the management of the industries is in competent hands. Numerous investigations and examinations in the last two decades have shown, however, that the management of the prison industries has at no time been well organized or had a chance for the permanency necessary to effect an efficient system of production. Prison labor, at best, is untrained and contains a considerable percentage of fundamentally (psychologically) incompetent persons. It takes therefore more than the application of average intelligence to utilize their labor to advantage. No such intelligence has, however, been applied."<sup>99</sup>

It begins to be clear that institutionalism has struck roots deeply into the labor system of the New York prisons. It has very clearly

<sup>98</sup>Klein, *Prison Methods in New York State*, p. 272.

<sup>99</sup>*Ibid.*, pp. 263-64.

been under perfunctory, mediocre management. It has even been charged in certain quarters that the men in supervision of the system purposely mismanaged it in order to bring discredit upon it. However that may be, the facts remain. Officialism has prevented the recognition of some of the most evident and obvious methods and devices for rendering the system efficient. A special Prison Survey Committee, reporting to Gov. "Al" Smith in 1920, comments as follows:

"There has been no organized attempt to classify and segregate the men according to their mental and physical abilities and disabilities; the low-grade feeble-minded, the hardened criminal, and the normal-intelligent have been placed in the same prison and often in the same prison shop. No reward, either in increased wage or decreased term of imprisonment—two things most highly valued by the prisoner—has been given for increased effort or for superior skill in the shop. A penny and a half a day is the wage for all alike and the credit system of giving merits and demerits according to the prisoner's production and conduct is largely nominal. The machine equipment in the shops has not kept pace with modern improvements, nor has an adequate managerial supervision been provided. The result has been production of inferior grade and a steady loss of sales. It has been said by one of the leading union men, who visited the prison shops, that 'the conditions in the prison shops are such that a man although skilled on entrance would so degenerate into habits of idleness and slovenly work that he would be actually untrained during his imprisonment.'"<sup>100</sup>

It would be interesting to know just what reasoning lies back of the provision of a cent and a half per day as the going wage for the prison work. No wonder the men malingers and say: "What's the use—we don't get paid for the work—why the hell should we work?"<sup>101</sup> The Prison Survey Commission made a long list of recommendations for the improvement of the system:

1. Examination and classification of the men, with their allotment to the industries for which they are best fitted.
2. Provision of incentives through:
  - (a) Provision of a wage adjusted to the ability of individuals and to the productive efficiency of the shops.
  - (b) Postponement of reduction of sentence of any prisoner until he has served in a shop continuously and faithfully for at least a year.
3. Obtaining of efficient foremen for the shops through the payment of adequate salaries.
4. Installment of modern and adequate equipment.

---

<sup>100</sup>Report of the Prison Survey Committee (New York, 1920), p. 31.

<sup>101</sup>Ibid., p. 32.

5. Observation of strict business rules:
  - (a) School, baths, shaves, etc., not to interrupt the continuity of the working day.
  - (b) Proper illumination of shops and their equipment with safety devices.
6. Introduction of vocational courses, supplemental to the shop work.
7. Administrative changes:
  - (a) Experienced and successful man as head of the bureau of industry—salary of \$7,500 a year.
  - (b) Sales agent in the proposed bureau of finance, supplies, and audit—salary of \$7,500 a year.
  - (c) Competent selling department under the bureau of finance, supplies, and audit.
8. Standardization of the prison production and reduction of the variety of output in order to secure greater quantity and quality.
9. Consultation with bureau of finance, supplies, and audit before any releases are issued authorizing purchasing institutions to buy in open market goods listed as available from the prison shops.<sup>102</sup>

It can be seen that much of the above has to do with elementary compliance with the law itself as well as with the principles of business procedure. It seems that the whole policy of prisoner employment in New York State has been suffering from politics and indifferentism. The remedy lies in the injection of personality into its management.

The report of the State Commission of Prisons for 1921 recognizes most of the criticisms of the Prison Survey Committee and indicates its desire to carry out many of the recommendations made. Commissioner Pierce, after an inspection of the industries in the State prisons, in which he found less than half of the men employed and those less than thirty-four hours a week, reached the conclusion that the "matter of 'self-government' has been allowed to interfere with the production of the industries." He made a series of recommendations which are in part different from those made by the Prison Survey Committee. For example, he believed more guards should be employed, so that the prisoners could work eight hours a day and yet have sufficient time for recreation, that the eight-hour day be fully observed, that the number of prisoners employed in maintenance be decreased, that the Superintendent of State Prisons insist that the rules and regulations promulgated by him be carried out in the same manner

<sup>102</sup>Ibid., pp. 32, 33.

by all wardens, that the practice of transferring and re-transferring from one prison to another be reduced to a minimum. He strongly seconded the recommendations of the Committee in the matter of classifying the prisoners and grading the institutions so that each might contain a different class of prisoners, and in the matter of the payment of a reasonable wage to the convicts. He repeatedly referred to the pernicious influence of the self-government feature. It has given rise to politics in the prisons where it has been introduced. "The organization is run by a certain few and apparently for selfish ends." He believed that the falling-off in the prison production since 1914 was largely due to this.<sup>103</sup>

The state-use system in New York is not to be regarded as a failure nor yet as an entire success. Provided the suggested reforms could be made, one wonders what might be the result.

Another state which has adopted the state-use system in wholesale fashion is Pennsylvania. It also is afflicted with a high degree of idleness in the prisons. The causes of this are also a bit obscure. It is safe to say that they are administrative in large part. Mr. A. H. Votaw believes that it is largely due to the restriction of the market for the products to the public institutions. As Secretary of the Pennsylvania Prison Society, he of course represents men who are chiefly concerned with "the opportunity of the prisoners to regular employment." He comments as follows:

" . . . I am beginning to entertain the belief that a law requiring public institutions to purchase prison-made articles or produce is unwise and inexpedient. Afford the institutions every opportunity to purchase such goods; but do not make such transactions compulsory. Coercion is akin to penalizing. The unwilling purchaser is a poor patron. Evasion of the law is a constant occurrence."<sup>104</sup>

Mr. Votaw advocates a return to the state account system. He believes the chief contribution to a solution of the problem of idleness in the prisons lies in the provision of a wider market. He does not think that free labor would be very seriously affected. He believes that the contract system was at the bottom of the grievances of the unions. He refers to the fact that twenty-nine states are now selling prison-made goods in the open market. He recalls the fact that in 1909 there were reported to be in the United States 2,900 idle, able-bodied prisoners, 2,079 of whom were in Pennsylvania. He speaks with some enthusiasm of the situation in Minnesota, where the Stillwater Prison,

<sup>103</sup>Twenty-seventh Annual Report of State Commission of Prisons (New York, 1921), pp. 62-79, *passim*.

<sup>104</sup>Proceedings of American Prison Association (1921), pp. 57-8.

operating its industries under the State account system, is the most prosperous of any in the country. Says he:

"They sell the twine and the farming implements to the general public and for the State account. They make little or no apology to the International Harvester Company, or to the various labor organizations. The men have their periods of recreation, and opportunities for further education are not denied. While it has been said by way of criticism that most of the men will not follow the same trade or kind of work that they have engaged in at the State Prison, it also may be stated that the habits formed by a connection with a great and successful enterprise will be of vast benefit to them whatever they may undertake in the future."<sup>105</sup>

Mr. Votaw does not allude to the fact that, in a sense, there is a preferred market for the prison products in Minnesota, inasmuch as the farmers buy the twine and implements in defiance of the Harvester Company, whose monopoly over such business is thereby checked. Labor unions have very little concern over the outcome in that particular instance anyway, as their fortunes are not particularly affected.

This study cannot pretend to solve the problem of convict labor. Enough has been accomplished if its history, nature, and difficulties have been clearly set forth. It is clear, however, that, like most social problems, it is evolutionary. It involves a process of continuous adaptation. Conditions change and the viewpoints of men change with them. A hundred years ago, free labor and the penologists disagreed over the contract system. Later they came to agreement as to its undesirability and joined forces for its abolition. Today, there seems to be increasing disagreement once more, the contention this time being over the state account system. Many penologists favor the latter, whereas the National Committee on Prison labor, with its trade-union backing, is still strongly committed to the state-use system. There is no sign, however, that any large number of either the reformers or the labor representatives desire a return to any system of private control and exploitation. Public control seems to be here to stay. The fight has definitely shifted from the question of the form of control to that of the extent and nature of the market. It may well be that common ground may again be found whereon the majority of those interested in prison progress can measurably take their stand. Perhaps it would be possible to so manage the state account system as to prevent under-selling of the products of free labor and thus remove the real ground of objection of the latter to that system. To that end, the appointment of labor representatives to positions on the administrative bodies which control the prison industries would seem to be a step in the right

---

<sup>105</sup>Ibid., p. 62.



direction. On the other hand, it may be that the difficulties of the state-use system are temporary and removable, especially through better organization and administration. Meanwhile, we must remember that facile, dogmatic solutions of such problems as these are very likely to be unreliable.

### CONCLUSION

One who has made a thorough investigation of prison labor in New York State, both from the standpoint of its history and from that of contemporary problems, arrives at the following conclusion:

"One conclusion perhaps we may safely accept as the result of the long history of prison labor in this State. It is, that no single system has as yet been found that is profitable from the standpoint of the management, satisfactory to the administrator, and, at the same time, reasonable with regard to the interests of the prisoner and the interests of free labor and business. We may as well abandon, then, any thought of making a prison even self-supporting, to say nothing of making it profitable, if we are to give due heed to the paramount necessity of rehabilitating the prisoner upon his discharge as a competent member of his economic and social environment, if we want to keep him in good health and improve his physical condition, and if, finally, we want to utilize the labor of prisoners for carrying out necessary public improvements. We should rather assume what has, in fact, been assumed in connection with children's and women's institutions, that prisons are an educational investment and that they are to be conducted as such. The cost of their maintenance should be regarded in the same light as expenditure for schools and for the support and subsidy of universities. When we have successfully eliminated from our conscious or unconscious requirement of a prison that it be financially profitable we may approach the whole question of prison labor with a clearer mind and simpler purpose."<sup>106</sup>

It may be observed that there is no reason why a prison need not be self-supporting, if the greater ends are first attained. We need not be so pessimistic as the above writer and abandon hope of finding a solution that will reconcile the various interests and ends that are legitimately involved. However, his insistence upon the fact that reformation is the primary desideratum is entirely commendable.

There is much ground indeed for optimism in the tremendous progress that has been made in the last two hundred years in the solution of penal problems of all kinds. And this in spite of the undoubted fact, as seen by Hobhouse, that the prison inmates compose the veritable rear-guard and the stragglers of the Grand Army of Society as it moves along the toilsome route of Social Progress. Men have never, in their associated life, lacked motives of mutual aid. In isolation,

<sup>106</sup>Klein, *Prison Methods in New York State*, p. 281.

these motives yield to those of selfishness and exploitation. In association, they receive superior social sanction, are reared high, and tend to drive the selfish impulses into their lair. All men value more highly the nobler impulses in all other men, because all alike profit more thereby. This is why publicity is the great antidote for evils of all kinds. Publicity has been the major agent in prison reform. And so it will continue to be. We may safely trust to it the revelation and removal of real abuses in the future as in the past.

A half-century of steady searching and exposure of the facts about convict labor policies has resulted in the strangling of the exploiting systems in this country. Only about a dozen states still adhere actively to the contract system, and the lease has almost vanished. Florida cannot endure many more revelations of it. Alabama, which has a system equivalent to the lease, promises its abolition in 1924. Yet the removal of abuses is not the construction of advisable and proper alternatives. That is the problem of the present. It is a problem wholly of technology. The fundamental aim, that of reformation for the prisoner, is not at this day, a matter of serious dispute.

With the question of motives definitely settled, we may have ground for even increased expectation that the matter of application will be solved with increasing success. Questions of application admit of a greater degree of co-operation and breadth of mind than questions of motive. We get down to means rather than ends.

Therefore, it would be strange if we could not isolate a group of principles of prisoner employment which may be regarded as definitely established and which may be elevated into the status of standards. We believe that there is such a group and, to that end, we submit the following:

1. Prisoners should be regularly employed at an amount not to exceed their normal capacities.
2. They should be self-supporting, without, however, the slightest taint of exploitation or harmful overwork.
3. Surplus wages should be placed to the account of the prisoner, to be paid to him at discharge; or, provided he have a wife or family, they should be extended to the latter.
4. The employment should be of varied types, offering the prisoner a twofold choice, both on the ground of preference and on that of vocational training.
5. There should be the minimum possible real competition with free labor.

6. Total abolition of private control of the labor of prisoners, and private profit therein.

7. Prisons may be made self-supporting only when all the above principles have been observed and put into operation.

## BIBLIOGRAPHY

### BOOKS BY INDIVIDUAL AUTHORS

1. Aschaffenburg, Gustav. *Crime and Its Repression*. Boston. 1913.
2. Barker, Ernest. *The Political Thought of Plato and Aristotle*. London. 1906.
3. Beaumont, Gustave Auguste de and Tocqueville, Alexis Charles Henri Clerel de. *On the Penitentiary System in the United States, and Its Application in France*. Philadelphia. 1833.
4. Cable, George Washington. *The Silent South*. New York. 1889.
5. Cheyney, Edward Potts. *An Introduction to the Industrial and Social History of England*. New York. 1918.
6. Commons, John Rogers and Associates. *History of Labor in the United States*. 2 vols. New York. 1918.
7. Ellis, Havelock. *The Criminal*. New York. 1890.
8. Henderson, Charles Richmond. *Introduction to the Study of Dependent, Defective and Delinquent Classes and of Their Social Treatment*. Boston. 1901.
9. — — — *Outdoor Labor for Convicts*. Chicago. 1907.
10. Ives, George. *A History of Penal Methods*. London. 1914.
11. Jowett, Benjamin. (Translator). *The Dialogues of Plato*. 5 vols. Oxford. 1892.
12. Klein, Philip. *Prison Methods in New York State*. New York. 1920.
13. Livingston, Edward. *A Code of Reform and Prison Discipline*. New York. 1872.
14. Lowell, Abbott Lawrence. *The Government of England*. 2 vols. New York. 1919.
15. McMaster, John Bach. *A History of the People of the United States, from the Revolution to the Civil War*. 8 vols. New York. 1920.
16. Osborne, Thomas Mott. *Society and Prisons*. New Haven. 1916.
17. Parmelee, Maurice. *Criminology*. New York. 1919.
18. Pike, Luke Owen. *A History of Crime in England*. 2 vols. London. 1876.
19. Robinson, Louis Newton. *Penology in the United States*. Philadelphia. 1921.
20. Ruggles-Brise, Sir Evelyn. *The English Prison System*. London. 1921.
21. Simonds, John Cameron and McEnnis, John T. *The Story of Manual Labor in All Lands and Ages*. Chicago. 1886.
22. Webb, Sidney and Beatrice. *English Prisons Under Local Government*. London. 1922.
23. Whitin, Ernest Stagg. *Penal Servitude*. New York. 1912.

24. ——— The Caged Man. New York. 1913.
25. Wines, Enoch Cobb. The State of Prisons and of Child-Saving Institutions in the Civilized World. Cambridge. 1880.
26. Wines, Frederick Howard. Punishment and Reformation. New York. 1919.

#### WORKS IN SERIES, COMPILATIONS AND REPORTS

27. Annals of the American Academy of Political and Social Science. March, 1913. Vol. 46. Prison Labor.
28. Bulletin No. 5 of the Department of Labor. July, 1896. Convict Labor. Vol. 1 of the Bulletins. Washington. 1896.
29. Correction and Prevention. Series published by the Russell Sage Foundation. 4 vols. New York. 1910.
30. Library of Congress (Division of Bibliography). List of References on Prison Labor. Washington. 1915.
31. Proceedings of the Forty-First Annual Convention of the American Federation of Labor. June, 1921. Washington. 1921.
32. Proceedings of the National Anti-Convict-Contract Association, 1886. Chicago. 1886.
33. Proceedings of the National Conference of Charities and Corrections, 1874-1922. 49 vols. Boston, etc. 1876-1922.
34. Proceedings of the National (later the American) Prison Association, 1870, 1873, 1874, 1883-1921. 40 vols. New York, etc. 1871-1921.
35. Proceedings of the Academy of Political Science, New York. January, 1914. Good Roads and Convict Labor. New York. 1914.
36. Report of the Industrial Commission on Prison Labor. Vol. 3 of the Commission's Reports. Washington. 1900.
37. Report of the Prison Survey Committee, State of New York. Albany. 1920.
38. Reports of Special Commissions of Connecticut and New Jersey (1880), of the Joint Special Legislative Committee of Massachusetts (1880), and of Carroll D. Wright, Chief of Bureau of Labor Statistics of Massachusetts (1879). Contract Convict Labor. Albany. 1880.
39. Second Annual Report of the Commissioner of Labor (1886). Convict Labor. Washington. 1887.
40. Senate Document No. 494, 63rd Congress. A Report from the Secretary of Labor, May 22, 1914. Federal and State Laws Relating to Convict Labor. Washington. 1914.
41. Twentieth Annual Report of the Commissioner of Labor (1905). Convict Labor. Washington. 1906.
42. Twenty-Seventh Annual Report of the State Commission of Prisons, State of New York. New York. 1921.

#### ESSAYS, ADDRESSES AND ARTICLES

43. Alexander, Hooper. "The Convict Lease and the System of Contract Labor—Their Place in History." The South Mobilizing for

Social Service. Addresses delivered at Southern Sociological Congress. Atlanta, 1913. Nashville. 1913.

44. Barry, Richard. "Slavery in the South Today," *Cosmopolitan Magazine*, March, 1907. Vol. 42.
45. Hiller, E. T. "Development of the Systems of Control of Convict Labor in the United States," *Journal of Criminal Law and Criminology*, July, 1914. Vol. 5.
46. ——— ——— ——— "Labor Unionism and Convict Labor," *Journal of Criminal Law and Criminology*, March, 1915. Vol. 5.
47. Russell, Charles Edward. "A Burglar in the Making," *Everybody's Magazine*, June, 1908. Vol. 28.

#### PERIODICALS

48. *The Nation*, July 11 and July 18, 1923. Vol. 117.
49. *The Survey*, April 15, 1923. Vol. 50.